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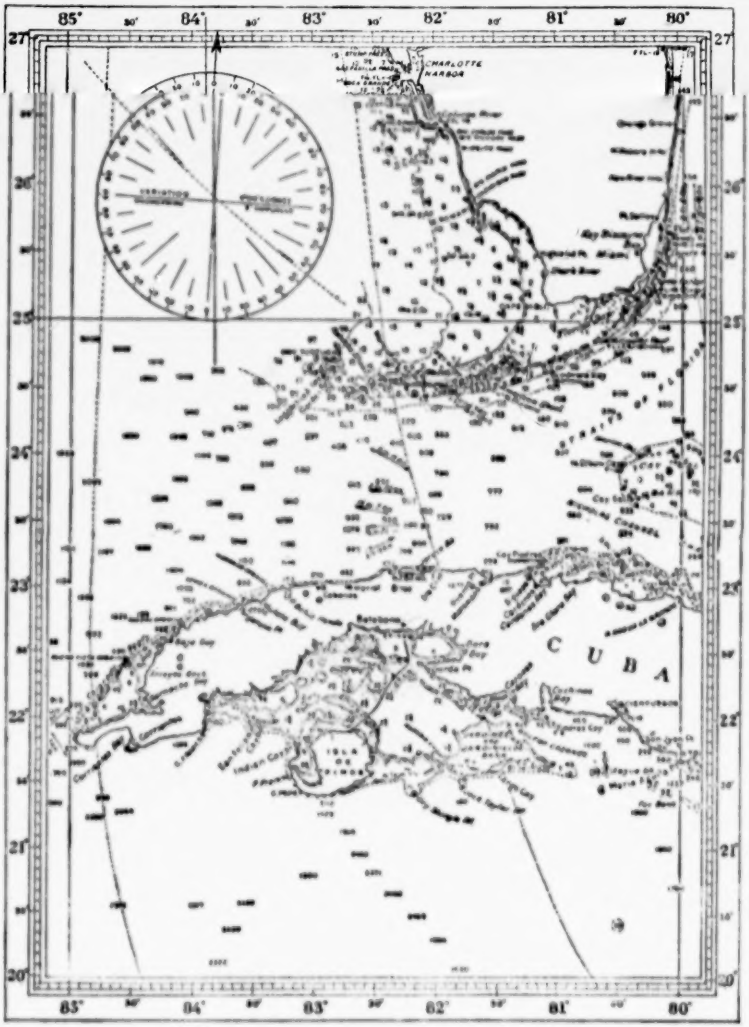


ISLE OF PINES—SURROUNDING WATERS AND MAINLAND.

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### STATEMENT.

This case presents for consideration the question whether the Isle of Pines, an island lying about 35 miles south of Cuba, is "foreign country" within the meaning of the Dingley Act so called.

The Dingley Act (act of July 24, 1897, 30 Stat., 151) provides for the imposition of duties only upon articles "imported from foreign countries."

Paragraph 217, (30 Stat., 151, 169) provides:

> Cigars, cigarettes, cheroots of all kinds, four dollars and fifty cents per pound and twenty-five per centum ad valorem; and paper cigars and cigarettes, including wrappers, shall be subject to the same duties as are herein imposed upon cigars.

Section 2804, Revised Statutes of the United States, as amended by section 26, of the tariff act of August 27, 1894 (28 Stat., 509, 552), and continued in force by section 34 of the Dingley Act (30 Stat., 151, 213), provides as follows:

> No cigars shall be imported unless the same are packed in boxes of not more than five hundred cigars in each box; and no entry of any imported cigars shall be allowed of less quantity than three thousand in a single package; and all cigars on importation shall be placed in a public store or bonded warehouse, and shall not be removed therefrom until the same shall have been inspected and a stamp affixt to each box indicating such inspection, and also a serial number to be recorded in the custom-house. And the Secretary of the Treasury is hereby authorized to provide the requisite stamps and to make all necessary regulations for carrying the above provisions of law into effect.

The Secretary of the Treasury has made a regulation, by virtue of the power given him in the section last quoted, as follows:

> Each person is entitled to bring in fifty cigars or three hundred cigarettes for his own use. All cigars and cigarettes in excess of this number and less than three thousand are liable to seizure, but in meritorious cases may be released by the payment of a fine equal to the duty and the internal-revenue tax.

The above were all the material provisions of our tariff laws in force when this case arose upon the following facts:

September 30, 1903, Pearcy, the plaintiff in error and below, brought to the port of New York from the Isle of Pines 40 boxes of cigars, the product of and manufactured in said isle. (Rec. 3.)

The cigars were seized by Stranahan, the defendant in error, then the collector of the port of New York, on the ground that they did not constitute a legal package within the statute above referred to. (Rec. 3, 4.)

The plaintiff entered a formal protest, and thereafter brought a "complaint" in the Circuit Court of the United States for the Southern District of New York against the defendant to recover the value of the cigars. (Rec. 3.)

The basis of that complaint was that the Isle of Pines "is in the possession of and part of the United States" (Rec. 3); in other words, domestic territory, and therefore the provisions of law relative to articles "imported from foreign countries" had no application.

The only pleading filed for the defendant was a demurrer, upon the following grounds:

> The plaintiff's complaint herein does not state facts sufficient to constitute a cause of action against this defendant. (Rec. 5.)

Judgment, with no opinion of the court, was entered for the defendant (Rec. 6, 7), and this writ of error was brought. (Rec. 1, 2.)

Four assignments of error are made (Rec., 7), but they are purely formal. The substance of the plaintiff's case is that the Isle of Pines had ceased to be "foreign country" when he brought his cigars to the port of New York.

But before indicating our position and discussing that question we shall direct attention to a preliminary question of pleading, which we are confident, however, the plaintiff will not desire to raise.

PRELIMINARY QUESTION OF PLEADING.

The plaintiff has alleged that the Isle of Pines "is in the possession of and part of the United States." If that allegation be admitted by the demurrer, we shall be obliged to pray for permission to file an answer denying it, for, if it stands, one of the so-called insular cases is conclusive against us.

In *De Lima* v. *Bidwell*, 182 U. S., 1, this court had occasion to consider whether, after we had taken possession of Porto Rico under the treaty of peace between the United States and Spain, ratified April 11, 1899, articles brought from Porto Rico to the United States were liable to duty under the Dingley Act imposing duties upon articles "imported from foreign countries." And it was held that, because Porto Rico had been ceded and possession taken, the Dingley Act did not apply, and therefore that the duties had been wrongfully levied.

In *Downes* v. *Bidwell*, 182 U. S., 244, it was held to be within the power of Congress to impose duties upon articles brought from territory—Porto Rico—ceded to us by treaty, of which we have taken possession, but which has not been incorporated into the United States. However, in the case under discussion, there is no tariff act subsequent to the Dingley Act which applies. Therefore, if we can not dispute the allegation that the Isle of Pines is "in the possession of and part of the United States" the *De Lima* case will be controlling.

We claim the right to dispute the truth of the allegation for the following reasons:

So much of it as alleges that the Isle of Pines is a "part of the United States" is obviously a conclusion of law and not a well-pleaded averment of fact, which a demurrer admits. The court knows judicially that the Isle of Pines, before the treaty of peace with Spain, was not a part of the United States, and that if it has become a part of this country it must be by virtue of some article in that treaty. To allege, therefore, that the Isle of Pines is a part of the United States is merely to suggest to the court the proper construction of the treaty—a question of law.

Moreover, this court takes judicial cognizance whether or not a given territory be within the boundaries of the United States.

*Jones* v. *United States*, 137 U. S., 202, 214, where,

by reason of the action of the President, the island of Navassa, in the Caribbean Sea, was considered to be a part of the United States.

*Foster* v. *Neilson*, 2 Peters, 253, where the question presented was whether the United States or Spain, after the cession of Louisiana by France, owned the disputed territory between the Perdido and Iberville rivers; and the court followed the determination of the political departments, asserting title in the United States.

So, also, in *State* v. *Dunwell*, 3 Rhode Island, 127, 128, where a conviction for taking oysters from the Seekonk River, a fishery of the State, was sustained because "the State has always claimed jurisdiction up to and 'along the easterly side or bank' of the Seekonk River, and exercised it in fact. The courts are bound to take cognizance of the boundaries in fact claimed by the State."

Therefore, it must be beyond the competence of the parties by their pleadings to control the court, for it could not perform its functions of taking judicial cognizance, whether or not a given territory be part of the United States, if a demurrer be held to admit such an allegation.

This is shown very clearly by the case of *Taylor* v. *Barclay*, 2 Simons, 213. That was a bill for discovery, a material allegation being that the "Federal Republic of Central America" had been recognized by the British Government. Upon demurrer it was argued that this allegation was con-

fessed, but the court held otherwise, made inquiry at the foreign office, ascertained that the allegation was untrue, and decided the case upon the truth. And Vice-Chancellor Shadwell said (p. 221):

> Inasmuch as I conceive it is the duty of the judge in every court to take notice of public matters which affect the government of this country, I conceive that, notwithstanding there is this averment in the bill, I am bound to take the fact as it really exists, not as it is averred to be.

In *Jones* v. *United States*, 137 U. S., 202, 215, the rule in *Taylor* v. *Barclay* was approved.

Besides, this court has announced that it is its duty in considering treaties, to follow the American construction of them.

> *Foster* v. *Neilson*, 2 Pet., 253.
> *United States* v. *Arredondo*, 6 Pet., 691.
> *Garcia* v. *Lee*, 12 Pet., 511.

It would be absurd, therefore, if, as we shall endeavor to show hereafter, the political departments have determined that the Isle of Pines is in the possession of and is a part of Cuba, to contend that the demurrer can admit the contrary.

It is well settled, therefore, that one of the exceptions to the rule that a demurrer admits facts well pleaded is that no allegation is admitted which the court judicially knows to be untrue.

One reason for this rule has already been suggested, that the parties can not control the court in the exercise of its functions, one of which is to

take judicial cognizance of the public acts of the legislative and executive departments.

Another reason is that when a party pleads "that which is historically false, and which the judges are bound to take notice of as being false," it is not a well-pleaded averment within the rule.

> *Taylor* v. *Barclay*, 2 Sim. 223, quoted and approved in *Jones* v. *United States*, 137 U. S., 215.

And other reasons may be suggested. If the pleadings disclose an averment judicially known to be false, the court clearly will not base its decision upon it, for that would be to make knowingly an erroneous decision. And there is no good reason why the parties should be required to join on an issue of fact which the court must ultimately decide itself, and which it knows to be incapable of proof.

To illustrate by applying this reasoning to the averment in this case. And at the outset we concede that the question of possession is the purest kind of a question of fact. However, as we shall show hereafter, it can be determined by public acts, of which judicial notice will be taken, that the United States has never taken possession of the Isle of Pines, and that Cuba has been in possession, claiming title since May, 1902, when the United States withdrew from the island of Cuba. Now, these facts being known to the court—in theory known before the plaintiff brought this action—how can it be held that the

demurrer admits that which is known to be false? If an answer, and not a demurrer, had been filed, there would have been no evidence for the jury, for all the facts upon which this case depends are public in character, judicially known to the court.

In addition to the cases referred to above the following are pertinent:

*Lincoln* v. *United States*, 197 U. S., 417, where several suits to recover duties on merchandise shipped from New York to Manila were considered together. One of them was decided upon demurrer to an answer filed by the United States, which set up, in effect, that Manila was in our possession solely by force of arms as a part of hostile territory. It was considered that this allegation was not confest.

It is true that the point was not discust by the court, but the opinion notes the fact of the demurrer, and the plaintiff's brief directed attention to it. It can not be said, therefore, to have been past over without notice.

*Southern Pacific Railroad Company* v. *Groeck*, 68 Fed. Rep., 609.

This was a bill to establish title and compel a reconveyance. Upon demurrer the court judicially noticed certain acts of the Secretary of the Interior, contradicting material allegations, and decided the case upon the true facts thus ascertained.

That this exception to the general rule—if, indeed, it be proper to call it an exception—was recognized in the days when the rules of pleading

were unbending and strictly enforced, (see, *Cole* v. *Maunder*, 2 Rolle's Abridgment, 548, decided in 1635, wherein it was said that a demurrer would not confess an allegation that stones were thrown *molliter et molli manu*).

We shall feel at liberty, therefore, notwithstanding the demurrer, to contradict the allegation that the Isle of Pines is a part of and in the possession of the United States, by reference to public acts which this court will notice judicially.

Later on we shall argue that the plaintiff can not prevail in this case because a political question is involved which this court is incompetent to decide.

Of course, the parties can not compel the court to decide questions beyond its competence.

THE GOVERNMENT'S POSITION.

1. We shall show that this case presents for consideration a question of boundaries, which is nonjudicial in its nature, to be settled by the political departments; that the extreme view of the action of the proper departments that can be taken in favor of the plaintiff is that they have reached no determination, and, therefore, this court can not decide this case, there being no political action for it to follow.

2. Assuming that it can be held that the political departments have determined that the Isle of Pines is a part of the United States, we shall claim that this court is without jurisdiction because the po-

litical departments have appointed an exclusive mode in which the dispute shall be settled: by a future treaty, in accordance with the terms of the so-called Platt amendment, assented to by Cuba and later embodied in the stipulations of a treaty between the United States and the Republic of Cuba.

3. Our main contention will be that the Isle of Pines constituted an integral part of Cuba, that sovereignty over the Isle of Pines was relinquished merely, and that it is not included in the phrase "other islands now under Spanish sovereignty in the West Indies," in the following articles of the treaty of peace between the United States and Spain, ratified April 11, 1899:

ARTICLE I.

> Spain relinquishes all claim of sovereignty over and title to Cuba.
>
> And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

ARTICLE II.

> Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West

> Indies, and the island of Guam, in the Marianas or Ladrones. (30 Stat., 1754–1755.)

These articles of the treaty were founded upon Articles I and II of the peace protocol of August 12, 1898, entered into between the United States and Spain, which provided:

> "ARTICLE I. Spain will relinquish all claim of sovereignty over and title to Cuba.
>
> "ART. II. Spain will cede to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also an island in the Ladrones, to be selected by the United States." (30 Stat., 1742.)

Altho this position disparages our title, we feel compelled to take it because it is the attitude of the Executive Departments, and for other reasons, which will become apparent hereafter in the argument.

If we succeed in showing that sovereignty over and title to the Isle of Pines were relinquished merely under Article I, we shall rely on the case of *Neely* v. *Henkel*, 180 U. S., 109, as conclusive that it always has been, and was, "foreign country" when the plaintiff brought his cigars to New York, September 30, 1903. Furthermore, we shall show that the Republic of Cuba was then in existence as an independent nation, exercising full powers of government in the Isle of Pines.

The question in the *Neely* case was, whether Cuba was a foreign country or foreign territory

within the act of Congress of June 6, 1900, chap. 793 (31 Stat., 656), providing for the extradition from the United States of persons committing certain crimes within any foreign country or foreign territory, or any part thereof, occupied or under the control of the United States. Held, that Cuba came within this description.

The reasoning of that case is conclusive that the Isle of Pines was "foreign country" within the Dingley Act, if it was included in the term "Cuba" in the treaty.

It was said (pp. 119, 120):

> The facts above detailed make it clear that within the meaning of the act of June 6, 1900, Cuba is foreign territory. It can not be regarded, in any constitutional, legal, or international sense a part of the territory of the United States.
>
> While by the act of April 25, 1898, declaring war between this country and Spain, the President was directed and empowered to use our entire land and naval forces, as well as the militia of the several States, to such extent as was necessary to carry such act into effect, that authorization was not for the purpose of making Cuba an integral part of the United States, but only for the purpose of compelling the relinquishment by Spain of its authority and government in that island and the withdrawal of its forces from Cuba and Cuban waters. The legislative and executive branches of the Government by the joint resolution of April 20,

1898, expressly disclaimed any purpose to exercise sovereignty, jurisdiction, or control over Cuba "except for the pacification thereof," and asserted the determination of the United States, that object being accomplished, to leave the government and control of Cuba to its own people. All that has been done in relation to Cuba has had that end in view, and, so far as the court is informed by the public history of the relations of this country with that island, nothing has been done inconsistent with the declared object of the war with Spain.

Cuba is none the less foreign territory, within the meaning of the act of Congress, because it is under a military governor appointed by and representing the President in the work of assisting the inhabitants of that island to establish a government of their own, under which, as a free and independent people, they may control their own affairs without interference by other nations. The occupancy of the island by troops of the United States was the necessary result of the war. That result could not have been avoided by the United States consistently with the principles of international law or with its obligations to the people of Cuba.

It is true that as between Spain and the United States—indeed, as between the United States and all foreign nations—Cuba, upon the cessation of hostilities with Spain and after the Treaty of Paris, was to be treated as if it were conquered territory. But

as between the United States and Cuba that island is territory held in trust for the inhabitants of Cuba to whom it rightfully belongs and to whose exclusive control it will be surrendered when a stable government shall have been estabilised by their voluntary action.

4. Our last proposition will be that, conceding that the Isle of Pines was ceded to the United States by the treaty, as we have never taken possession of it, and as the Republic of Cuba has exercised full powers of sovereignty over it since May 20, 1902, it has not ceased to be "foreign country," within the Dingley Act.

## ARGUMENT.

### I.

**Whether the Isle of Pines be included within the boundaries of the United States is a political question, which can not be decided by this court, being nonjudicial in its nature.**

The question in this case resolves itself into a question of boundaries within the principle$ of the following cases:

*Foster* v. *Neilson*, 2 Pet., 253.
*Garcia* v. *Lee*, 12 Pet., 511.
*United States* v. *Arredondo*, 6 Pet., 691.

In each of those cases the question presented for consideration was, whether or not, after the treaty between the United States and France ceding Louisiana a portion of that territory, in the possession of Spain and claimed by that country, had past to the United States.

This question was regarded as a boundary question, and the court ascertained and followed the determination of the political departments of the United States, which had decided that the disputed part belonged to the United States.

In *Foster* v. *Neilson*, 2 Pet., 253, it was said, by Mr. Chief Justice Marshall (p. 307):

> However this may be, it is, we think, incontestable that the American construction of the article, if not entirely free from question, is supported by arguments of great strength, which can not be easily confuted. In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights, and if they can not adjust their differences peaceably the right remains with the strongest. The judiciary is not that department of the government to which the assertion of its interests against foreign powers is confided; and its duty commonly is to decide upon individual rights according to those principles which the political departments of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous. We think, then, however individual judges might construe the treaty of St. Ildefonso, it is the providence of the court to conform its decisions

> to the will of the legislature, if that will has been clearly exprest.

In *Garcia* v. *Lee*, 12 Pet., 511, Mr. Chief Justice Taney, referring to *Foster* v. *Neilson*, said (p. 516):

> This court then decided that the question of boundary between the United States and Spain was a question for the political departments of the Government; that the legislative and executive branches having decided the question, the courts of the United States were bound to regard the boundary determined on by them as the true one.

In *United States* v. *Arredondo*, 6 Pet., 691, the court said, referring to *Foster* v. *Neilson* (p. 711):

> This court did not deem the settlement of boundaries a judicial but a political question—that it was not its duty *to lead, but to follow* the action of the other departments of the Government.

Those cases are indicative, therefore, of the further proposition that political questions, being nonjudicial in their nature, are not to be decided by the courts. This inference necessarily follows from the manner in which the cases were treated. The true construction of the treaties is not sought except for the purpose of showing the reasonableness of the American construction adopted by the political departments.

And in *Jones* v. *United States*, 137 U. S., 202, where a question arose whether or not Navassa

Island were a place within the jurisdiction of the United States, the court followed the determination of the President, who was authorized by the Congress to consider any island not within the jurisdiction of any other Government, upon which a deposit of guano had been discovered by a citizen of the United States, as appertaining to this nation. It was said (p. 212):

> Who is the sovereign, *de jure* or *de facto*, of a territory is not a judicial but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens, and subjects of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances.

A number of cases are cited, among them *Foster* v. *Neilson* and *Garcia* v. *Lee*, *ub. sup.*

It is well settled that the courts of the United States are scrupulous to exercise no power not clearly judicial in its nature.

*Hayburn's case*, 2 Dallas, 409.
*United States* v. *Ferreira*, 13 How., 40.
*United States* v. *Yale Todd*, 13 How., 52 (note).
*Gordon* v. *United States*, 117 U. S., 697.

There being a clear distinction between political and judicial questions, it follows that when a case

arises which involves a determination of a political question, the court can not decide the case unless there has been action by the political departments. If no determination has been reached, the court is powerless. If the question has been settled, the court will follow it.

Hereafter, under the third point of our argument, we shall set out fully all legislative and Executive action. We shall urge that those departments have determined that the Isle of Pines is not within the boundaries of the United States, but appertains and of right belongs to Cuba. However, conceding that it may be considered that we have prest that conclusion too far, we submit that it can not be successfully urged that the political departments have determined that the Isle of Pines belongs to the United States. The utmost that can be said is that there is no American construction of the treaty of peace—no determination of the boundary question. As the court can not decide it, it follows that the plaintiff must fail, for the foundation of his case rests upon a political question undetermined by the proper departments of the Government.

## II.

**If it be considered that the title to the Isle of Pines has been determined by the political departments to be in the United States, the fact that the question of ownership by mutual agreement between the United States and the Republic of Cuba is to be settled by arbitration, the adjudication to take the form of a treaty, excludes this court from its jurisdiction to decide the question of title in this case.**

While this court, as a general rule, will decide questions of individual rights, founded upon a treaty, by ascertaining and following the determination of the political departments upon political questions, still, if those departments, charged with the settlement of our relations with foreign powers, have directed that political questions be settled in a certain manner, that determination is conclusive on the courts.

It is well settled that, even to determine questions judicial in their nature, special tribunals may be erected, their decisions to be final and conclusive on the courts.

> *United States* v. *Ferreira*, 13 How., 40.
> *Murray* v. *Hoboken, etc., Co.*, 18 How., 280.
> *Bates & Guild Co.* v. *Payne*, 194 U. S., 109.
> *United States* v. *Ju Toy*, 198 U. S., 253.

*A fortiori*, therefore, may the political departments direct that a controversy with a foreign power shall be settled in a certain way.

The so-called Platt amendment attached to the Army appropriation act of March 2, 1901 (31 Stat., 897) provided, in part:

> VI. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

That provision was assented to by being incorporated into the Cuban constitution, and was reenforced by being embodied in the treaty with Cuba, signed May 22, 1903 (33 Stat., 2248, 2252), which provided:

> ARTICLE VI.
>
> The island of Pines shall be omitted from the boundaries of Cuba specified in the constitution, the title thereto being left to future adjustment by treaty.

The manner, therefore, in which the dispute over the Isle of Pines, if any there be, should be settled had been agreed upon long before September, 1903, when the plaintiff brought his cigars to the port of New York, and the courts will not act in advance of a determination in the way agreed upon.

## III.

**The Isle of Pines was not ceded to the United States by the treaty of peace, Article II, but was included within the term "Cuba" in Article I.**

The demonstration of this proposition requires merely that the true interpretation of the treaty be shown. This court will put itself in the position of the Government when the treaty was

proposed and ratified, and will avail itself of all the light which the President had when he made the treaty and which the Senate had when it was ratified.

The rule is well stated with reference to the construction of statutes—and it equally applies in the construction of treaties—as follows:

> In endeavoring to ascertain what the Congress of 1862 intended, we must, as far as possible, place ourselves in the light that Congress enjoyed, look at things as they appeared to it, and discover its purpose from the language used in connection with the attending circumstances.
>
> *Platt* v. *Union Pacific R. R. Co.*, 99 U. S., 48, 64.
>
> See also, *Smith* v. *Townsend*, 148 U. S., 490, 494.
>
> *United States* v. *Laws*, 163 U. S., 258.
>
> *Church of the Holy Trinity* v. *United States*, 143 U. S., 457.

Besides, this court has announced that it will follow that interpretation which the political departments have put upon treaties.

> *Foster* v. *Neilson*, 2 Pet., 253, 307, 309.
> *Cherokee Nation* v. *Georgia*, 5 Pet., 1, 46.
> *United States* v. *Arredondo*, 6 Pet., 691, 711.
> *Garcia* v. *Lee*, 12 Pet., 511.

With these canons to guide us, we shall proceed to show the situation at the time the treaty was

made and ratified, and the interpretation which the political departments have given to it.

(a) *The Isle of Pines, by a well-settled principle of international law, a part of Cuba.*

In Hall's International Law, edition of 1895, pages 129, 130, is the following:

> Apart from questions connected with the extent of territorial waters, which will be dealt with later, certain physical peculiarities of coasts in various parts of the world, where land impinges on the sea in an unusual manner, require to be noticed as affecting the territorial boundary. Off the coast of Florida, among the Bahamas, along the shores of Cuba, and in the Pacific, are to be found groups of numerous islands and islets rising out of vast banks, which are covered with very shoal water and either form a line more or less parallel with land or compose systems of their own, in both cases inclosing considerable sheets of water, which are sometimes also shoal and sometimes relatively deep. The entrance to these interior bays or lagoons may be wide in breadth of surface water, but it is narrow in navigable water. To take a specific case, on the south coast of Cuba the Archipelago de los Canarios stretches from sixty to eighty miles from the mainland to La Isla de Pinos; its length from the Jardines Bank to Cape Frances is

> over a hundred miles. It is inclosed partly by some islands, mainly by banks, which are always awash, but upon which, as the tides are very slight, the depth of water is at no time sufficient to permit of navigation. Spaces along these banks, many miles in length, are unbroken by a single inlet; the water is uninterrupted, but access to the interior gulf or sea is impossible. At the western end there is a strait, twenty miles or so in width, but not more than six miles of channel intervene between two banks, which rise to within seven or eight feet from the surface, and which do not consequently admit of the passage of seagoing vessels. In cases of this sort the question whether the interior waters are, or are not, lakes inclosed within the territory, must always depend upon the depth upon the banks and the width of the entrances. Each must be judged upon its own merits. But in the instance cited there can be little doubt that the whole Archipelago de los Canarios is a mere salt-water lake and that the boundary of the land of Cuba runs along the exterior edge of the banks.

This work was the standard English authority on international law when the treaty of peace was made in 1898.

The same paragraph is to be found in the last (fifth) edition at page 124.

(b) *We intervened in aid of the Cuban revolutionists from the highest motives of humanity, and not to wage a war of conquest.*

On April 20, 1898, the Congress of the United States adopted the following joint resolution (30 Stat. L., 738):

> Whereas the abhorrent conditions which have existed for more than three years in the island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battle ship with two hundred and sixty-six of its officers and crew, while on a friendly visit in the harbor of Habana, and can no longer be endured, as has been set forth by the President of the United States in his message to Congress of April eleventh, eighteen hundred and ninety-eight, upon which the action of Congress was invited: Therefore,
>
> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled.* First. That the people of the island of Cuba are, and of right ought to be, free and independent.
>
> Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.
>
> Third. That the President of the United States be, and he hereby is, directed and

empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States to such extent as may be necessary to carry these resolutions into effect.

Fourth. *That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people.*

The language of the fourth clause of the above joint resolution of April 20, 1898, is the key to unlock every difficulty. The intention is plain and unmistakable.

It is the declaration of a purpose to turn over to Cuba all the integral parts of Cuba. We have never made claim to any of the thousands of islets and keys surrounding Cuba, and it is to be supposed that no claim would be made to the Isle of Pines if it was shown to be upon the same footing. And in expounding the treaty, therefore, and our subsequent course of conduct we are never to forget the purpose of the Congress, declared in said joint resolution.

Great weight was given to it in the opinion in the *Neely* case, cited *ante*, page 13.

(c) *The term "Cuba," historically and politically, includes the Isle of Pines.*

This is shown by the following record of official acts of the Spanish Government, which, from 1774

to 1898, treated the Isle of Pines as included in the political division known as Cuba, just as the island of Nantucket is included in the Commonwealth of Massachusetts.

They are found in convenient form in a pamphlet, entitled "The Isle of Pines and the Political Term 'Cuba,'" prepared by direction of and lodged in the State Department by the Cuban minister and printed at the end of this brief as Appendix A.

1. First Official Census of Cuba, 1774.

This census, taken by order of and under the direction of the Captain-General of Cuba, includes the Isle of Pines, population, 78. (Appendix A, pp. 64, 65.)

2. Statistical Plan of the Ever Faithful Island of Cuba for the Year 1827.

This plan was prepared by order of the Captain and Governor-General of Cuba by a committee of the chiefs of the several departments and printed at His Majesty's printing office, Habana, 1829.

It includes the Isle of Pines: "Area of the Isle of Pines, 865½ square miles. General area of the mainland and islands, 32,807½ square miles."

Under the heading "Isle of Pines" is found much information about its climate and resources, and the fact is brought out that the governor-general of Cuba had given considerable thought to this island, and had made a proposal to the King, who had established, by royal order of August 1, 1828, a colony on the island called La

Reina Amalia, and designed its fortifications and defense. It is stated also that the Isle of Pines belongs to the same jurisdiction as Cuba. (Appendix A, pp. 65, 67.)

The reasons for attaching the Isle of Pines more closely to Cuba appear in the—

3. "Historical Account of the Benefits Rendered the Royal Economical Society, etc., by His Excellency Don Francisco Dionisio Vives," the governor-general referred to in the "Statistical Plan." (Appendix A, p. 68.)

> 1832 (p. 29 et seq.). "The Isle of Pines, situated to the south of this island (Cuba), has always been a dangerous point and one frequently visited by the enemies of Spain. Its proximity and geographical position rendered its preservation important, and it could not be accounted as safe in the state of depopulation in which it was. General Vives could not ignore this without leaving in abandonment a point which would some day cause us great trouble, and thus he busied himself with the establishment of a colony."

4. "Census of the Population of Cuba in 1841." This census, taken by order of the Captain-General, includes the Isle of Pines: "Western department—Jurisdiction of Habana. Name of the districts. * * * 51. Isle of Pines. Males and females of all classes, 621." (Appendix A, p. 69.)

5. By royal order of August 19, 1855, the captain and governor general was directed to "make a

new division of the judicial districts of the island." Accordingly he ordered that the judicial district of Bejucal should include, besides several Cuban cities and towns, the Isle of Pines. (Appendix A, pp. 70, 71.)

6. The general budgets of receipts and expenses in the island of Cuba for the years 1857–58, 1895–96 include the Isle of Pines. (Appendix A, pp. 71, 72, 79, 80.)

7. In the census of Cuba for 1861, for 1877, and for 1887 the Isle of Pines is treated as a part of Cuba. (Appendix A, pp. 73, 76; Census of Cuba, p. 179.)

8. By Royal decree of June 9, 1878, the island of Cuba was divided into six provinces for the administration of civil affairs, and the Isle of Pines was included in the province of Habana. (Appendix A, pp. 73–76.)

9. In 1879, 1890, 1898 the inhabitants of the Isle of Pines voted for deputies to represent Cuba in the Spanish Cortes. (Appendix A, pp. 77, 78, 79, 80.)

If the foregoing record does not show that the specific designation "Isle of Pines," which is as much the name of an ayuntamiento, or municipal district, as of an island (Census of Cuba, 1899, prepared by the War Department, p. 20), was not in the political sense a part of the specific designation "Cuba," at the time the treaty of peace was made and ratified, it is difficult to imagine what more would be necessary.

The instance of the island of Nantucket occurs. Her inhabitants vote for Massachusetts Represen-

tatives to the Congress; they form a part of Massachusetts's administrative and judicial districts. So did the inhabitants of the Isle of Pines vote for Cuban deputies to the Cortes and form a part of the administrative and judicial districts of Cuba. They are included in the Cuban census, the receipts and expenditures of the isle are included in the Cuban budget, they are governed by the captain-general of Cuba, and the isle forms a municipal district, or ayuntamiento, of the province of Habana.

These facts were accessible, undoubtedly, to the President when the peace protocol of August 12, 1898 (30 Stat., 1742), was signed. It must be presumed that they were known then, and at the date of the ratification of the treaty, April 11, 1899. Our declared purpose contained in the joint resolution of April 20, 1898 (ante, p. 28), made it the duty of the President and the Senate to know them. Besides, many of them had been known to the Government before November, 1898.

As a handbook, primarily for the use of military officers, the War Department published in June, 1898, "Military Notes on Cuba." It was revised in November, 1898, and from the later edition it appears that the status of the Isle of Pines was well known. Thruout that publication the Isle of Pines is considered as an integral part of Cuba.

One division treats of the Province of Habana, its judicial districts, townships, cities, and towns, and it is stated that the Isle of Pines is an *ayunta-*

*miento*, or township, in the judicial district of Bejucal, in said Province of Habana. (Military Notes on Cuba, p. 249.)

An extended description of each *ayuntamiento* is given, that of the Isle of Pines occupying several pages. (Ib., pp. 257-262.)

And in treating the geographical, topographical, agricultural, and other facts about Cuba, the Isle of Pines is constantly considered as a part of Cuba. (Ib., pp. 17, 199, 200, 203–207.)

At the time this manual was prepared maps were made by the War Department. Two of them are filed with this brief. They show the Isle of Pines as a part of the province of Habana.

It can not be doubted, therefore, that long before the treaty of peace was signed, December 10, 1898, and was ratified, April 11, 1899 (30 Stat., 1754), the President and the Senate and all the world knew that the Isle of Pines was an integral part of Cuba.

In view of the pledge contained in the joint resolution of April 20, 1898 (*ante*, p. 24), in the light of which the treaty must be construed, it appears that the Isle of Pines was not one of the "other islands" ceded by Article II to the United States.

The chief purpose of that treaty was to sweep the power of Spain from the West Indies. That purpose must have been growing from the time war was declared until it was accomplished by the treaty. To accomplish it, it was wise not to be

specific, but to use general language, for some place over which Spain was sovereign might have been overlooked and our object defeated. Hence the broad provision of the second article of the treaty.

A difficulty has been felt, however, with reference to the words "other islands," and it has perplexed some to assign a meaning to them. In view of the purpose which we had in making the treaty, this is scarcely necessary. The idea was to receive a cession of Porto Rico and other islands, if any, not constituting an integral part of Cuba, which was not ceded.

However, these words may be applied to the following islands, which were under Spanish sovereignty:

1. Vieques Island, 13 miles east of Porto Rico, containing 195 square miles;

2. Culebra Island, 25 miles northeast of Porto Rico, containing 9 square miles;

3. Mona Island, 42 miles west of Porto Rico, containing about 16 square miles.

(See S. Doc. No. 205, p. 9.)

Another difficulty has been exprest, based upon the fact that the Isle of Pines has a name of its own and was not called Cuba. For reasons of convenience, islands, like cities and towns, generally have names of their own. Most of the keys and islets, too, about Cuba have distinct designations, like Cayo Romano, Cayo Coco, and Jardines del

Rey, yet no one suggests that they past to us under Article II of the treaty of peace.

We consider now that we have shown that the treaty of peace can not be construed by itself, without reference to the subsequent action of the political departments, as ceding the Isle of Pines to the United States. It was a part of Cuba, over which sovereignty was relinquished.

We pass on to detail the various acts of the political departments.

(d) *The action of the political departments.* 1. *Acts during our military occupation of Cuba, showing that the Isle of Pines was treated as a part of Cuba.*

January 1, 1899, the Spanish evacuated Habana, the sovereignty of Spain withdrew from Cuba, and the government of the island was transferred to a military governor as the representative of the President of the United States.

See "The Establishment of Free Government in Cuba," compiled in the Bureau of Insular Affairs from the records of the War Department. (S. Doc. No. 312, 58th Cong., 2d sess., p. 6, filed with this brief.)

> The occupation of the island by the United States being established, it was necessary to enter upon the work of creating and establishing a stable government administered by the Cuban people, * * *.
>
> The first step was to ascertain the population of the several provinces of the island,

> the educational and other qualifications for participating in the elective franchise, and secure other data essential to fixing the representation and right of exercising the privilege of voting. This was accomplished by means of the Cuban census. (Sen. Doc. No. 312, p. 7.)

THE CENSUS OF CUBA.

(A "Report on the Census of Cuba, 1899," was published in 1900 by the War Department, office director census of Cuba. From it the following facts and statements are taken:)

This census was ordered by the President August 17, 1899, as a first step toward assisting "the people of Cuba" to establish "an effective system of self-government." (Census of Cuba, pp. 10, 11.)

In taking the census the first requisite was the delineation of the enumeration districts; and accordingly the island was divided into 1,607 districts, a list of which is given in the census of Cuba, page 668 *et seq.* And at page 674 it appears that three enumerators took the census of the Isle of Pines, which is designated as a municipal district, of the judicial district of Bejucal, in the Province of Habana.

The following extracts from this publication are of importance:

> The Government of Cuba has jurisdiction not only over the island of that name, but also over the Isle of Pines, lying directly to the south of it, and more than a thou-

sand islets and reefs scattered along its northern and southern coasts. (p. 17.)

The Isle of Pines, with an area of 840 square miles, is a municipal district of the province of Habana. It is in effect two islands, connected by a marsh, the northern being somewhat broken by hills, the southern low, flat, and sandy (p. 20).

The total population of Cuba, including the Isle of Pines and the neighboring keys, was, on October 16, 1899, 1,572,797 (p. 72).

Further evidence that the War Department in taking the census of Cuba considered the Isle of Pines as a part thereof, is contained in the "Population tables."

See Census of Cuba, pp. 179, 182, 191, 194, 200, 203, 218, 225, 232–235, 299, 358, 406–413, 507, 512, 515, 517, 520, 553, 674, 698, as follows:

HABANA PROVINCE.

| Municipal district. | 1887. | 1899. |
|---|---|---|
| Aguacate | 3,346 | 3,163 |
| Habana | 200,448 | 242,055 |
| Isla de Pinos | 2,040 | 3,199 |

*Population by wards and by cities.*—Under province of Habana: Isla de Pinos district, 3,199 (p. 182).

*Rural population, excluding cities of 8,000 inhabitants or more, with area and density, by municipal districts.*—Under province of Habana: Isla de Pinos, rural population, 3,199; area in square miles, 840; density per square mile, 3.8 (p 192).

*Sex, general nativity, and color.*—Under province of Habana: Isla de Pinos, total, 3,199; male, 1,782; female, 1,417. Native white: Total, 2,480; male, 1,309; female, 1,171. Foreign white: Total, 198; male, 186; female, 13 (p. 194).

*Percentage of population by sex, general nativity, and color.*—Under province of Habana: Isla de Pinos, total population, 3,199; male, 55.7; female, 47.8; native white, 77.5; foreign white, 22.4; colored, 28.6 (p. 200).

*Age and sex.*—Under province of Habana: Isla de Pinos, total population, 3,199; under 5 years, male 195, female 158; 5 to 17 years, male 547, female 528; 18 to 20 years, male 106, female 97; 21 to 44 years, male 671, female 473; 45 years and over, male 263, female 161 (p. 203).

*Birthplace.*—Under province of Habana: Isla de Pinos, total population, 3,199; Cuba, 2,990; Spain, 195; other countries, 14 (p. 218).

*Birthplace, sex, and race.*—Under province of Habana: Isla de Pinos district, total, 3,199; Cuban, 2,818; Spanish, 32; in suspense, 334; other citizenship, 15 (p. 225).

*Conjugal condition.*—Under Province of Habana: Isla de Pinos, total, 3,119; single, 2,184; married, 774; living together as husband and wife by mutual consent, 56; widowed, 184; unknown, 1 (p 299).

*School attendance, literary and superior education.*—Under Province of Habana: Isla de Pinos, total population, 3,199; attended school, 38; did not attend school, 784 under

10 years of age. Ten years of age and over: Attended school, 37; can neither read nor write, 1,343; can read but can not write, 42; can read and write, 954; not stated, 1. Superior education: Yes, 22; no, 3,177 (p. 358).

*Foreign whites, male and female.*—Under Province of Habana: Isla de Pinos, total, 185. Male—52, agriculture, fisheries, and mining; 48, trade and transportation; 12, manufactures and mechanical industries; 2, professional service; 60, domestic and personal service; 11, without gainful occupation; 13 females—1, trade; 1, professional; 1, domestic and personal service; 10 without gainful occupation (p. 410).

*Colored.*—Total, 288; 96 agriculture, 13 trade, 15 manufacturing, 90 domestic and personal, 74 without gainful occupation (p. 412).

*Province of Habana, colored females.*—Isla de Pinos, total, 233; domestic and personal service, 28; without gainful occupation, 205 (p. 413).

*Number and size of families.*—Under Province of Habana: Isla de Pinos, total population, 3,199; total number of families, 572; average size, 5.6 (p. 507).

*Dwellings and families.*—Under Province of Habana: Isla de Pinos, unoccupied buildings, 48; occupied dwellings, 546; number of families, 572; persons to a family, 5.6; persons to a dwelling, 5.9; families to a dwelling, 1 (p. 512).

All the maps therein are exprest to be "maps of Cuba," yet they all include the Isle of Pines.

See Census of Cuba, pp. 18, 72, 74, 76, 80, 96, 98, 100, 114, 118, 132, 152.

The first act of the United States, therefore, in contemplation of its purpose to withdraw from Cuba at the earliest practical moment, recognized that the Isle of Pines constituted an integral part of Cuba.

April 18, 1900, an election law was promulgated for the regulation and control of proposed municipal elections.

> June 16, 1900, an election was held thruout the island in which the people of Cuba in all the municipalities, which include the entire island, elected all their municipal officers. (S. Doc. No. 312, p. 7.)

From that statement it would appear that the inhabitants of the Isle of Pines, a municipal district, as we have seen, participated in the election of June 16, 1900.

This is stated as a fact in Senate Document No. 205, Fifty-ninth Congress, first session, report from Committee on Foreign Relations, filed with this brief, page 7.

It is denied in the minority report of Senators Morgan and Clark. (S. Doc. No. 205, p. 215.)

Their reasoning, however, seems quite inconclusive. It is true that in the order of April 18, 1900, the municipalities of the island (Cuba) are not enumerated, but in view of an order previously

issued, appointing officers for the municipality of the Isle of Pines, it is altogether probable that the municipality was included and that it held an election under the order. (S. Doc. No. 205, p. 44.)

The Military Governor had appointed a mayor and first assistant mayor of the Isle of Pines in August, 1899. (Ib., p. 44.) He was Military Governor of Cuba, and had no authority to appoint to office in the Isle of Pines, unless it were a part of Cuba.

Besides, General Wood has stated (S. Doc. No. 205, p. 187) that "under the military government of Cuba the Isle of Pines was governed by municipal officials, subject to the general authority of the civil governor."

As shown hereafter the inhabitants of the Isle of Pines participated in the elections of September 15, 1900, and December 31, 1901, and it is not to be doubted that they chose municipal officers in the election of June 16, 1900.

Soon after the municipal election an order was made enlarging the powers of the municipal governments and putting into their hands as much of the government as was practicable. When the new municipal governments were under way July 25, 1900, a call for a constitutional convention was issued, which begins by reciting our pledge of the fourth article of the joint resolution of April 20, 1898 (ante, p. 24), and referring to the establishment of municipal governments. (S. Doc. No. 312, pp. 7–8.)

The inhabitants of the Isle of Pines participated in this election, held September 15, 1900, thereby assisting in the choice of delegates to perform the high duty of forming a constitution. (S. Doc. No. 205, p. 7).

Order No. 218, by General Wood, dated October 14, 1901, approved by the War Department, and published by the Division of Insular Affairs in November, 1901, under the head of "Electoral divisions, Province of Habana:"

PROVINCE OF HABANA.

> It is divided into four circuits. * * * The third will be composed of the ayuntamientos of Guines, La Catalina, Madruga, Melena del Sur, Nueva Paz, San Nicolas, Guara, Bejucal, Batabano, Quivican, *Isle of Pines*, San Antonio de las Vegas, San Felipe, and La Salud. (S. Doc. No. 205, p. 7.)

By October 1, 1901, the Cuban Constitutional Convention had concluded its work, and on December 31, 1901, an election was held to choose governors of provinces, provincial councillors, members of the house of representatives, and presidential and senatorial electors. (S. Doc. No. 312, p. 12.)

And the inhabitants of the Isle of Pines participated in this election, for it was held under said order No. 218, of October 14, 1901. (S. Doc. No. 312, p. 17.)

February 24, 1902, the electors met, chose senators, and elected Tomas Estrada Palma to be

President, and Luis Esteves Romero to be Vice-President. (S. Doc. No. 312, p. 17.)

On May 20, 1902, the Cuban Congress was to meet to receive the transfer of the government. As this time drew near, General Wood, the military governor, on May 10 and 14, requested to be instructed what was to be done about the Isle of Pines. (S. Doc. No. 205, p. 103.)

By telegram of May 16, 1902, he was instructed:

> It is understood by the United States that the present government of the Isle of Pines will continue as a de facto government, pending the settlement of the title of said island by treaty pursuant to the Cuban constitution and the act of Congress of the United States approved March 2, 1901.
>
> ROOT, *Secretary of War.*

(Ib., p. 103.)

On May 20, 1902, the Military Governor wrote to "The President and Congress of the Republic of Cuba," in part as follows:

> Under the direction of the President of the United States, I now transfer to you * * * the government and control of the island, to be held and exercised by you, under the provisions of the constitution of the Republic of Cuba heretofore adopted by the constitutional convention and this day promulgated, and I hereby declare the occupation of Cuba by the United States and the military government of the island to be ended. * * * It is understood by the United States that the present government

> of the Isle of Pines will continue as a de facto government, pending the settlement of the title to said island by treaty, pursuant to the Cuban constitution and the act of Congress of the United States approved March 2, 1902. (S. Doc. No. 312, p. 17.)

(The true date of the act of Congress referred to is March 2, 1901.)

On the same day President Palma replied:

> *It is understood that the Isle of Pines is to continue de facto under the jurisdiction of the Government of the Republic of Cuba*, subject to such treaty as may be entered into between the Government of the United States and that of the Cuban Republic, as provided for in the Cuban constitution and in the act passed by the Congress of the United States, and approved on the 2d of March, 1901. (S. Doc. No. 312, p. 19.)

In the minority report to the Senate Report (S. Doc. No. 205) it appears that it has been thought that General Wood misunderstood Secretary Root's telegram, it being considered that the words "the present government of the Isle of Pines" referred to our military government. (S. Doc. No. 205, p. 217.)

This is an error, however, and General Wood did not misunderstand, as is shown by the facts that the distinct statement in President Palma's letter was not excepted to, that the Cubans have ever since governed the Isle of Pines, and that the Congress has acquiesced by taking no action. The

Cubans have established schools thereon, courts and government have been instituted, and a tariff levied upon American goods imported in the Isle of Pines. (S. Doc. No. 205, pp. 168, 176, 177, 182, 183, and 185.)

As we have shown, it was the policy of our Government to permit the Cubans a large measure of self-government while we were in military possession of Cuba, to school them to govern themselves.

In *Neely* v. *Henkel* (180 U. S., 109, 117, 118), the proclamation of General Brooke and various orders are set out which show conclusively that the civil administration of the island of Cuba was carried on by the Cubans, under direction of the military authority of the United States.

At the date of the transfer of government to Cuba, May 20, 1902, the Isle of Pines was actually being governed by the Cubans. The inhabitants of the Isle of Pines had elected municipal officers in June, 1900, and on December 31, 1901, they had helped to choose a governor of the Cuban Province of Habana, within which the Isle of Pines was included, councilors of said Province, members of the Cuban house of representatives, and presidential and senatorial electors.

On February 16, 1903, the Senate, by resolution, requested the President "to inform the Senate as to the present status of the Isle of Pines, and what government is exercising authority and control in said island."

In reply thereto the President submitted a report from the Secretary of War, Mr. Root. (See S. Doc. No. 201, 57th Cong., 2d sess., reprinted in S. Doc. No. 205, pp. 186, 187.)

In that report is the following:

> The nature of the de facto government under which the Isle of Pines was thus left pending the determination of the title thereof by treaty is shown in the following indorsement upon a copy of the said resolution by the late military governor of Cuba:
>
> [First indorsement.]
>
> OFFICE OF LATE MILITARY
> GOVERNMENT OF CUBA,
> *Washington, February 20, 1903.*
>
> Respectfully returned to the Bureau of Insular Affairs. At the date of transfer of the island of Cuba to its duly elected officials the Isle of Pines constituted a municipality included within the municipalities of the province of Habana and located in the judicial district of Bejucal. The government of the island is vested in its municipal officers, subject to the general control of the civil governor of the province of Habana, who is vested under the constitution of Cuba with certain authority in the control of municipal affairs. Under the military government of Cuba the Isle of Pines was governed by municipal officials, subject to the general authority of the civil governor, who received his authority from the Governor-General. The Isle of Pines, as it had existed

under the military government, was transferred as a de facto government to the Cuban Republic, pending the final settlement of the status of the island by treaty between the United States and Cuba. The action taken by the military government was in accordance with telegraphic orders from the honorable the Secretary of War. The government of the island to-day is in the hands of its municipal officers, duly elected by the people under the general control of the civil governor of the province of Habana and the Republic of Cuba. As I understand it, the government of the Isle of Pines is vested in the Republic of Cuba, pending such final action as may be taken by the United States and Cuba looking to the ultimate disposition of the island. No special action was taken to protect the interests of the citizens of the United States who have purchased property and have settled in the Isle of Pines, for the reason that no such action was necessary. All Americans in the island are living under exactly the same conditions as other foreigners, and if they comply with the laws in force it is safe to say that they will not have any difficulty or need special protection. At the time these people purchased property they understood distinctly that the question of ownership of the Isle of Pines was one pending settlement, and in locating there they took the risks incident to the situation.

This indorsement by General Wood also answers the question of the resolution

regarding the protection of interests of citizens of the United States so far as this Department is able to furnish information thereon.

ELIHU ROOT,
*Secretary of War.*

It is quite apparent, therefore, that Secretary Root, in his telegram of May 16, 1902, used the words "present government" with reference to the Cuban Government.

But whatever may have been the meaning intended by the telegram of May 16, 1902, the construction put upon it by General Wood has been acquiesced in, and it is too late to urge that it was erroneous.

We see, therefore, that the conduct of the President's representatives in Cuba during the military occupation thereof was consistent thruout, and that the Isle of Pines was always treated as an integral part of Cuba.

OTHER EXECUTIVE ACTION.

In August, 1902, the Treasury Department decided that duties should be assessed on goods coming from the Isle of Pines at the same rates as similar merchandise imported from other places; and that is the rule to-day. (See Letter from the files of the Treasury Department, Appendix "B," p. 84.)

The attitude of the Executive is made more emphatic by the terms of the first treaty with Cuba,

signed July 2, 1903, over two months before the plaintiff brought his cigars here, by which the United States relinquished its claim to the Isle of Pines in favor of the Republic of Cuba.

This treaty was favorably reported to the Senate by the Committee on Foreign Relations, but considerable opposition having developed, it was recommitted, and not acted upon before the time for its ratification expired, February 2, 1904. (S. Doc. No. 205, p. 170.)

Another treaty was signed on March 2, 1904, relinquishing "all claim of title to the Isle of Pines * * * which has been or may be made in virtue of Articles I and II of the treaty of peace between the United States and Spain, signed at Paris on the tenth day of December, eighteen hundred and ninety-eight."

Article II of this treaty asserted that our relinquishment of claim of title was in consideration of grants of coaling stations to the United States by the Republic of Cuba. (S. Doc. No. 205, p. 170.)

However, it would seem that this consideration was named mainly for the purpose of winning over the opposition that had developed against the first treaty, rather than from any belief on the part of the Executive that we had a good claim of title to the Isle of Pines.

See the following letter, to be found in Senate Document No. 205, page 11:

DEPARTMENT OF STATE,
*Washington, November 27, 1905.*

DEAR SIR: I have received your letter of October 25, in which you say: "Kindly advise me at your very earliest convenience the necessary procedure to establish a territorial form of government for the Isle of Pines, West Indies, U. S. A."

It is no part of the duty of the Secretary of State to give advice upon such subjects. I think it proper, however, to answer your inquiry so far as it may be necessary to remove an error under which you appear to rest concerning the status of the Isle of Pines and your rights as residents of that island.

There is no procedure by which you and your associates can lawfully establish a territorial government in that island. The island is lawfully subject to the control and government of the Republic of Cuba, and you and your associates are bound to render obedience to the laws of that country so long as you remain on the island. If you fail in that obedience, you will be justly liable to prosecution in the Cuban courts and to such punishment as may be provided by the laws of Cuba for such offenses as you commit. You are not likely to have any greater power in the future. The treaty now pending before the Senate, if approved by that body, will relinquish all claim of the United States to the Isle of Pines. *In my judgment the United States has no substantial claim to the Isle of Pines. The treaty merely accords to*

*Cuba what is hers in accordance with international law and justice.*

*At the time of the treaty of peace which ended the war between the United States and Spain, the Isle of Pines was and had been for several centuries a part of Cuba. I have no doubt whatever that it continues to be a part of Cuba and that it is not and never has been territory of the United States. This is the view with which President Roosevelt authorized the pending treaty, and Mr. Hay signed it, and I expect to urge its confirmation.* Nor would the rejection of the pending treaty put an end to the control of Cuba over the island. A treaty directly contrary to the one now pending would be necessary to do that, and there is not the slightest prospect of such a treaty being made. You may be quite sure that Cuba will never consent to give up the Isle of Pines and that the United States will never try to compel her to give it up against her will.

Very respectfully,

ELIHU ROOT.

CHARLES RAYNARD, Esq.,
*President of American Club*
*of the Isle of Pines, West Indies.*

Besides, the seventh clause of the Platt amendment, assented to by Cuba, by incorporation in its constitution and by treaty stipulation, provided:

That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its

> own defense, the Government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points, to be agreed upon with the President of the United States. (31 Stat., 897; 33 Stat., 2248, 2252).

In a letter of August 14, 1899, John J. Pershing, Assistant Adjutant-General, writing by direction of the Assistant Secretary of War, advised a Mr. George Bridges, interested in timber lands, "that this island (the Isle of Pines) was ceded by Spain to the United States, and is therefore a part of our territory, altho it is attached at present to the division of Cuba for governmental purposes." (S. Doc. No. 205, p. 40.)

Of similar import are letters of January 13, 1900, January 15, 1900, and February 16, 1900, signed by G. D. Meiklejohn, Assistant Secretary of War. (S. Doc. No. 205, pp. 41, 42, 45, 46.)

Of course the Assistant Secretary had no power to bind this Government to a course of action, and probably the letters were written hastily, upon a very superficial examination of the question of the ownership of the Isle of Pines. He certainly soon began to have doubts about the propriety of his conduct, for in April, 1900, he refers the matter to the Attorney-General. (S. Doc. No. 205, p. 45.)

Afterwards the request for the Attorney-General's opinion was withdrawn, "because the matter was for diplomatic consideration rather than a

question for the decision of his Department." (S. Doc. No. 205, p. 43.)

About this time, apparently, the matter came to the attention of Mr. Root, the Secretary of War, for in March, 1900, the Assistant Secretary of War directed the following form of answer:

> The determination of the territorial limits of this country does not appertain to the Department, and that the Isle of Pines is subject to the jurisdiction of the military forces of the United States now in charge of civil affairs in the Island of Cuba. (S. Doc. No. 205, p. 47.)

August 17, 1900, the same form of answer was used by direction of the Secretary of War. (Ib., p. 44.)

And the same form was used down to the passage of the act of March 2, 1901, containing the so-called Platt amendment. (Ib., pp. 52, 54.)

Thereafter inquiries are simply referred to the sixth clause thereof, quoted above page 21, without comment. (Ib., pp. 55, 56, 58, 59, 60, 61, 62, 73.)

Large cession maps of the United States were issued in 1899, 1902, 1903, and 1904. Upon those of 1899 and 1902 the Isle of Pines appears as an inset map. Upon those of 1903 and 1904 it is omitted, and in its place was inserted a map of the Panama Canal and adjacent territory. (S. Doc. No. 205, p. 17.)

The insertion of the Isle of Pines was at variance

with the Executive attitude at the time, and two letters, set out in Senate Document No. 205, pages 16–17, show that neither in the Interior Department nor in the War Department is there any record of any authoritative instruction to place the Isle of Pines upon the maps.

This action in any event, however, is no more important than the Assistant Secretary of War's letters, for, certainly since May, 1902, the Executive has consistently acted upon a determination that the United States has no substantial, rightful claim to the Isle of Pines.

LEGISLATIVE ACTION.

The only positive legislative action has been the passage of the so-called Platt amendment, since embodied in a treaty, as shown above. (31 Stat., 897.)

It provided:

> *Provided further*, That in fulfillment of the declaration contained in the joint resolution approved April twentieth, eighteen hundred and ninety-eight, entitled "For the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the island of Cuba and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect," the President is hereby authorized to "leave

> the government and control of the island of Cuba to its people" so soon as a government shall have been established in said island under a constitution which, either as a part thereof or in an ordinance appended thereto, shall define the future relations of the United States with Cuba, substantially as follows:

Then follow eight clauses, the sixth as follows:

> VI. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

It has been asserted that the above provision annulled any right that the Republic of Cuba had to the Isle of Pines under the treaty.

> If the claim of Cuba had been good and valid in law or morals, Congress had the right, as a condition of its legislative act conferring sovereignty upon or a protectorate over the people of Cuba, to limit the government so created to the geographical limits of the Island of Cuba and thereby to annul any possible claim or right of the Republic of Cuba to the Isle of Pines. This is the legal effect of the Platt amendment.

(See Minority Report, S. Doc. No. 205, p. 200.)

However, it is to be observed that the minority report, in setting out the Platt amendment, omit the important preamble, as it may be called, wherein reference is made to the joint resolution of April 20, 1898. (See S. Doc. No. 205, p. 190.)

In that joint resolution, set out in full (*ante*,

p. 24), we denied in the most emphatic terms "any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof."

In the light of that positive promise we view the sixth clause of the Platt amendment not as asserting that we have a valid claim of title to the Isle of Pines, but as suggesting that each Government, our own and that of Cuba, look into the status of the Isle at leisure.

Some American citizens were making claim that the Isle belonged to us, and upon a consideration of the text of the treaty alone we had a superficial claim. It was suggested, therefore, that the matter be settled in the only practical way—by treaty—after each country had made full investigation of its rights.

The following letter by the author of the Platt amendment sustains this view:

> SENATE OF THE UNITED STATES,
> COMMITTEE ON RELATIONS WITH CUBA,
> *Washington, Conn., November 5, 1902.*
>
> J. C. LENNEY, Esq., *New York.*
>
> MY DEAR SIR: I have your favor of the 3d instant. I can not answer it at great length.
>
> I think it is a very fair question as to whether the cession of "Porto Rico and other islands" embraces the Isle of Pines. I have always maintained that it did, altho I recognized the force of the other contention. There are a great many islands adja-

cent to Cuba which it is acknowledged go with Cuba. The Isle of Pines is larger than any of the others and situated farther from Cuban shores, and I have never been able to see what other island or islands the treaty referred to, *but the Cuban people have claimed that it was always within the administrative jurisdiction of Cuba and belonged to Cuba the same as other adjacent islands; consequently, when preparing the amendment to the army bill, which has come to be known as the "Platt amendment," I inserted a clause to the effect that the title should be subject of treaty negotiations. I feel that it is of the utmost importance that it shall be ours.* It will give us the most advantageous point from which to defend the entrance of the Isthmian Canal. *I supposed, when I provided that it should be the subject of treaty negotiation, that unless we could satisfy the Cuban Government that it passed to us in cession, that it would come to us by purchase, and that is still my belief. But for the present, with the consent of this Government, I think it is in the possession of Cuba, with its title still undetermined and awaiting the making of the treaty,* the negotiations of which seem to proceed very slowly. Some people seem to think that Cuba will not make the treaty which it agreed to in accepting the provisions of the amendment. I do not entertain any such doubt, but like all diplomatic proceedings, it will probably take time and more time than may be agreeable. * * *

Yours truly,

O. H. PLATT.

(S. Doc. No. 205, p. 249.)

Cuba had included the Isle of Pines within its constitutional boundaries. (S. Doc. No. 205, p. 19.) This Government said: Omit it, for the present; the title will be adjusted in the future by treaty. Now, in good faith, after repeated declarations that we only intervened in Cuban affairs for the pacification of the island, not for conquest, no more could have been intended than to adjust the title to the Isle of Pines in conformity with the truth. If it had been intended to assert that the treaty of peace ceded the Isle of Pines to us, clear language of that import would have been employed. The language of the Platt amendment is not assertive of title. If it had provided merely that "the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba," the argument that a claim of title had been asserted would be very strong. The following clause, however, that the title be left to future adjustment by treaty, is an admission that the Cuban claim is recognized, at least, as substantial—worthy to occupy the time of the President and the Senate in negotiation and settlement.

The Platt amendment, therefore, can not be regarded as a statute, subsequent to a treaty, asserting the proper construction of the prior treaty. It leaves the treaty to be interpreted in the light of the circumstances existing when it was made. It was enacted because Cuba had included the Isle of Pines within her boundaries, and any claim that

the United States might have would have been foreclosed had we assented to the Cuban constitution in its original form. It was intended to give to us an opportunity to urge a claim of title if it should be found that we had a valid claim.

The most significant legislative action is non-action. We have permitted the Republic of Cuba to govern the Isle of Pines, and our minister to Cuba has urged the Cuban Government to various acts with reference to the Isle of Pines. He has induced the Cuban Government to promise not to transfer a leper hospital there, to give the isle a port of entry, to send three judges, to appoint an English-speaking teacher to teach in the Cuban schools, and to establish courts of records, so that deeds could be filed on the isle. (S. Doc. No. 205, pp. 177, 181, 182, 183, 184, 185.)

That we had withdrawn from the Isle of Pines, and that the Republic of Cuba has been governing it since May 20, 1902, must have come to the attention of Congress at an early date. It has certainly been known since February 28, 1903, when the President responded to the Senate resolution of February 16, 1903, by announcing that the Isle of Pines had been governed by the Republic of Cuba since May 20, 1902. That answer was printed as a Senate document (see S. Doc. No. 201, reprinted; S. Doc. No. 205, pp. 186, 187) and made public, and therefore, it must be presumed, became known to the House.

It was well-known that Cuba was levying a tariff upon American goods shipped from the United States to the Isle of Pines. (See Appendix B, pp. 83–86.)

With full knowledge of these facts, the Congress has taken no action and has tacitly admitted that Cuba's claim of title is superior to our claim.

The most extreme view that can fairly be taken of the attitude of the legislature is, that it is content that the claim of the United States to the Isle of Pines shall rest upon the proper construction of the treaty of peace with Spain.

The Executive is committed to the position that the United States have no valid claim of title; and it seems to us that the Legislature has not believed that our Government has a real, substantial claim. We suggest, therefore, that the court should follow the view of the political department and declare that the Isle of Pines is not territory of the United States.

However, if it be thought that the action of the political departments be not sufficiently definite, we submit that we have shown that the term "Cuba," in Article I of the treaty of peace, must have been intended to include the Isle of Pines.

## IV.

**Conceding, for the purposes of argument only, that the Isle of Pines was ceded to the United States by the treaty of peace, as we have never taken possession of the island, and as it has been and is being governed by the Republic of Cuba, it has not ceased to be "foreign country" within the Dingley Act.**

We have shown, above, under the third division of our argument, that Spain, after the treaty of peace, withdrew from all her possessions in the West Indies; and that we entered into military possession of Cuba for the purpose of pacifying the island and of educating the Cubans to govern themselves; that we took no possession of the Isle of Pines as separate from Cuba, but treated it as being under the military governor of Cuba; that when we withdrew from Cuba we withdrew from the Isle of Pines and permitted the Republic of Cuba to exercise sovereignty over the Isle of Pines as a de facto government; and that that state of affairs has existed from May 20, 1902, the date when we withdrew from Cuba and the Isle of Pines, down to the present time.

We have never taken possession of the Isle of Pines as a part of the United States, and have never attempted to exercise any powers of government over the island. The Republic of Cuba is in possession claiming title, and exercising de facto the powers of government.

It is immaterial to inquire whether Cuba is rightfully or wrongfully in control; that is, whether

the War Department was authorized to permit Cuba to govern the Isle of Pines. Cuba is, in fact, in possession and exercising the powers of government, and that situation brings this case, even upon the supposition that the Isle of Pines was ceded to the United States, within the principle of the following cases:

*De Lima* v. *Bidwell*, 182 U. S., 1.

This case was concerned with the question whether Porto Rico, after the treaty of peace, passed out of the designation "foreign country" in the Dingley Act.

Mr. Justice Brown, several times in the course of his opinion, emphasizes the point that Porto Rico had ceased to be "foreign country," not simply because it was ceded to the United States by the treaty, but also because possession had been taken.

Mr. Justice Brown said (p. 180):

> The *status* of Porto Rico was this: The island had been for some months under military occupation by the United States, as a conquered country, when, by the second article of the treaty of peace between the United States and Spain, signed December 10, 1898, and ratified April 11, 1899, Spain ceded to the United States the island of Porto Rico, *which has ever since remained in our possession, and has been governed and administered by us. If the case depended solely upon these facts, and the question were broadly presented whether a country which*

*had been ceded to us, the cession accepted, possession delivered, and the island occupied and administered without interference by Spain or any other power, was a foreign country or domestic territory, it would seem that there could be as little hesitation in answering this question as there would be in determining the ownership of a house deeded in fee simple to a purchaser, who had accepted the deed, gone into possession, paid taxes, and made improvements without let or hindrance from his vendor.* But it is earnestly insisted by the Government that it never could have been the intention of Congress to admit Porto Rico into a customs union with the United States, and that, while the island may be to a certain extent domestic territory, it still remains a "foreign country" under the tariff laws until Congress has embraced it within the general revenue system.

After referring to various decisions and the practise of the Government in regard to the application of the tariff laws to ceded territory, he said (p. 194):

> From this *résumé* of the decisions of this court, the instructions of the Executive Departments, and the above act of Congress, it is evident that from 1803, the date of Mr. Gallatin's letter, to the present time there is not a shred of authority, except the dictum in *Fleming* v. *Page* (practically overruled in *Cross* v. *Harrison*), for holding that a district ceded to and in the possession of the United States remains for any purpose

> a foreign country. Both these conditions must exist to produce a change of nationality for revenue purposes. Possession is not alone sufficient, as was held in *Fleming* v. *Page;* nor is a treaty ceding such territory sufficient without a surrender of possession. (*Keene* v. *McDonough*, 8 Pet., 308; *Pollard Heirs* v. *Kibbe*, 14 Pet., 353, 406; *Hallett* v. *Hunt*, 7 Ala., 882, 899; *The Fama*, 5 Ch. Rob., 97.)

The cases cited in the above extract, altho they were not concerned with the application of tariff acts, in other respects show a situation similar to that in the case under discussion.

*Keene* v. *McDonough*, 8 Pet., 308.

This case was concerned with the title to premises situated in Louisiana. The defendant relied upon the title of one Don Miguel Mahier, his predecessor in title, obtained by an adjudication of a Spanish tribunal, made after the cession to the United States, but before actual possession taken by the United States.

It was said (p. 310):

> The adjudication having been made by a Spanish tribunal, after the cession of the country to the United States, does not make it void; for we know, historically, that the actual possession of the territory was not surrendered until some time after these proceedings took place. It was the judgment, therefore, of a competent Spanish tribunal, having jurisdiction of the case, and rendered whilst the country, altho ceded,

> was *de facto* in the possession of Spain and subject to Spanish laws. Such judgments, so far as they affect private rights of the parties thereto, must be deemed valid.

*Pollard's heirs* v. *Kibbe*, 14 Pet., 353.

This, also, was a case where a grant by Spanish authority, after the treaty ceding Louisiana, but while Spain, owing to a boundary dispute with the United States, was in possession, was sustained. Here, an act of Congress recognized the validity of the grant.

*Hallett* v. *Hunt*, 7 Ala., 882, was a similar case.

In *The Fama*, 5 Ch. Rob., 107 (erroneously printed 5 Ch. Rob., 97, in the report of *De Lima* v. *Bidwell*, *supra*), the question was involved and discust by Sir W. Scott, "how far full sovereignty can be held to have past by the mere words of the treaty without actual delivery."

After referring to the universal rule, in all systems of jurisprudence, that to consummate the right of property a person must unite the thing with the possession, the learned judge says (page 115):

> This is the general law of property, and applies, I conceive, no less to the right of territory than to other rights.

In the case under discussion, Spain, by our admission, for the sake of the argument only, ceded the Isle of Pines to the United States and surrendered all her possession, but Cuba is in possession, claiming title and exercising the powers of government.

Now, as it is stated in *De Lima* v. *Bidwell*, *ub. sup.*, under such circumstances there has been no change of nationality for revenue purposes.

The mere fact of a cession is not enough to make foreign territory domestic. The cession gives a right to possession, but before the foreign territory can become domestic to this right must be added the possession itself.

This view considers a treaty of cession as like a conveyance of property at the common law, by which the grantee is not regarded as having a complete title until to his *jus in rem* he has united the *jus in re*.

(See *The Fama*, 5 Ch. Rob., 107, 115.)

If, therefore, when a treaty of cession is made, the ceded territory, or a part thereof, is occupied by an adverse claimant, who continues after the cession to administer his laws, the cession does not become complete, and the territory does not become domestic until it has been reduced to possession.

The Cubans, so far as they could, not being an independent government, claimed title to the Isle of Pines before we withdrew from Cuba, for they included it within the boundaries of Cuba, and, see also (S. Doc. No. 205, pp. 43, 44, letter of Secretary of State and Government for Cuba, dated August 10, 1900); and since our withdrawal they have remained in possession, claiming title and governing the island. Therefore, altho it be

considered that the Isle of Pines was ceded to the United States by Article II of the treaty of peace, yet it has not ceased to be "foreign country," because the United States has never taken possession under the treaty.

Finally, we refer to the case of *United States* v. *Rice*, 4 Wheat., 246. That was an action upon a bond for duties levied by the United States upon goods brought into Castine, then in the district of Maine, during its temporary occupation by the British troops in the war of 1812. It was held that the action would not lie, the duties having been imposed wrongfully, because the military occupation of the port enabled the enemy to exercise the powers of sovereignty to the exclusion of the United States. Castine, therefore, was regarded as a foreign port at the time the bond was taken.

So, in the case under discussion, the Isle of Pines must be regarded as foreign, because we have not that firm possession in fact which is essential to constitute a given territory domestic.

The judgment of the Circuit Court should be affirmed.

Respectfully submitted.

CHARLES J. BONAPARTE,
*Attorney-General.*

HENRY M. HOYT,
*Solicitor-General.*

OTIS J. CARLTON,
*Special Assistant to the Attorney-General.*

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## Appendix A.

### THE ISLE OF PINES AND THE POLITICAL TERM "CUBA."

The political division of the Spanish Kingdom called "Cuba" included both the island which had the specific designation "Cuba" and the island which had the specific designation "Isle of Pines," as also the hundreds of adjacent islets and keys, each of which had its specific designation, like Cayo Romano, Cayo Coco, and Jardines del Rey.

This is evidenced by a long series of statutes, royal decrees, orders, and dispositions of the Spanish Parliament and Throne in which authority and jurisdiction were expressly conferred upon the Government of Cuba over the Isle of Pines, and by the unvaried practice during four centuries of treating the Isle of Pines as a part of Cuba.

It was in that light that the Spanish commissioners approached the peace negotiations at Paris in 1898, and in that sense that they used the term "Cuba" in the protocols and in the treaty of peace.

The following royal orders, decrees and dispositions, statutes, reports, etc., taken at random, some given in full, others partly, translated from the Spanish, conclusively bear out that contention:

#### FIRST OFFICIAL CENSUS OF CUBA, 1774.

1774. This census, taken in 1774 by order of and under the direction of the Marquis de la Torre,

Captain-General of Cuba, included the Isle of Pines, as will be seen from the following extract:

| | | | |
|---|---|---|---|
| Habana | 75,618 | Remedios | 3,085 |
| Guanabacoa | 7,998 | Matanzas | 3,249 |
| S. M. de Rosario | 2,898 | Nueva Filipina | 2,617 |
| San Felipe | 2,132 | Stgo de Cuba | 19,384 |
| Stgo de las Veg | 1,809 | Pto. Principe | 13,332 |
| Jarnco | 536 | Bayamo | 12,250 |
| Sancti Spiritus | 8,265 | Holguin | 2,440 |
| Santa Clara | 8,103 | Baracoa | 2,222 |
| Trinidad | 5,614 | Isla de Pinos | 78 |

"STATISTICAL PLAN OF THE EVER FAITHFUL ISLAND OF CUBA FOR THE YEAR 1827."

1827. By order of, and under the direction of His Excellency Don Francisco Dionisio Vives, Captain and Governor General of Cuba, the above plan was prepared by a committee of chiefs of the several departments and printed at His Majesty's printing office, Havana, 1829, and the following is taken from a historical summary which precedes it:

> Nothing further was done in regard to this island until the 4th day of April, 1494, on which day Columbus sailed from the port of the Isabela in Santo Domingo with the idea of exploring it, which he did along the southern coast until he came upon the Isle of Pines, which he named Evangelista. * * *

Area of the Isle of Pines, 865½ square miles. General area of the mainland and islands, 32,807½ square miles.

Batabano, with an auxiliary church of the parish of Quivican, situated 4,395 yds. to the north of the landing upon the southern coast. * * *

"ISLE OF PINES."

> Belonging to the same jurisdiction, it lies between 21° 59′ 53″ and 21° 25′ 20″ latitude

and 76° 2′ and 10″ and 76° 47′ and 10″ longitude; its shape is angular, its greatest length from east to west being over 18 provincial leagues, and the greatest width 15; it has 76 leagues of coast, mostly unapproachable on account of the reefs which surround it and submerged shrubbery which covers them; it is divided into two portions—north and south—almost separated by a swampy belt, which crosses it from east to west, and called Cienega by its inhabitants, and formed by the deposits of several rivers which empty into it. Its northern portion faces on Cuba, and its area is estimated at 63 square leagues; its surface is higher than that of the former, and has peaks of quite an altitude and conical in shape, called la Canada, Daguila, Sierra Caballos, Sierra de Casas, and others, almost all isolated, distributed according to a certain economic order, alike wonderful and picturesque, from which rise many rivers which traverse all the plains portion; in it are scattered 24 cattle ranches; the land is fertile and mountainous, presenting Nature in its most vivid colors, its plains covered with pines or palms. The southern portion is almost uninhabited by man or beast, its lands most rocky and covered with timber of every kind."

This island abounds in meats, birds and fish in its rivers and coasts, including tortoise shell; in its woods are to be found many medicinal shrubs and others of excellent barks and leaves for tanning, principally the malpighia; marble, jasper, and other mineral stones; in the few experiments which have been made, its soil has given proof of the advantageous production of all kinds of colonial fruits, and a tobacco of as good a quality as that of Vuelta Abajo.

Its atmosphere and waters are so benefi-

cent that they have restored to health several persons afflicted with chronic diseases classed as incurables; of the second there are many with mineral properties—it is favored with a clear atmosphere, and the climatic changes are less sudden than those of Cuba.

The principal port is called Frances in the southern part with a capacity for large vessels; on the north there are only the mouths of the following rivers: Sierra de Casas, las Nuevas, and Santa Fé for coasting trade; the last the most frequented, being the shipping point for cattle. Since its discovery its population has not exceeded 100 persons of all classes dedicated to cattle grazing and fishing.

His excellency, the present captain-general, perceiving its importance for the aforesaid reasons, its proximity to Cuba and the advantage to its wealth and development which its settlement would give, proposed it in the like manner to His Majesty (R. I. P.), who by Royal order of August 1, 1828, saw fit to establish a colony called La Reina Amalia, disposing in regard to its population, what is exprest in the matter in the Royal warrant of October 21, 1817, issued for like purpose as the former; and also designing its fortification and defense. Since that date the beneficent designs of the Government, and well-founded hopes have materialized and to-day its progress is marked by the establishment of a town to be the capital of said colony, situated on the shores of the River Casas, and called Nueva Gerona; which contains 17 houses, military barracks, a prison ward, hospital and temporary warehouse, a doctor, a surgeon, two mixt stores, a blacksmith shop, a retail grocery, and a bakery.

The colony has a church dependent on Quivican, military commander, a justice of the peace, a minister of the Royal treasury, a maritime subdelegate, a parish, a detachment of soldiers, a battery protecting the harbor and capital, and a small warship for purposes of communication.

Present population: 130 whites, 30 free negroes, 39 slaves; total, 199—besides the garrison and convicts.

"HISTORICAL ACCOUNT OF THE BENEFITS RENDERED THE ROYAL ECONOMICAL SOCIETY; THE HOUSE OF BENEFICENCE AND OTHER BRANCHES OF SAID INSTITUTION BY HIS EXCELLENCY DON FRANCISCO DIONISIO VIVES."

Prepared by the joint committees of both corporations.

HABANA.

H. M. printing office for the government and captain generalcy, the Royal treasury and the Royal Patriotic Society.

1832 (page 29 et seq.):

The Isle of Pines, situated to the south of this island, has always been a dangerous point and one frequently visited by the enemies of Spain. Its proximity and geographical position rendered its preservation important and it could not be accounted as safe in the state of depopulation in which it was. General Vives could not ignore this without leaving in abandonment a point which would some day cause us great trouble, and thus he busied himself with the establishment of a colony. He acquired the lands of an estate at a moderate price and a half league of land with 98 caballerias made by donations for that purpose made by several individuals, all of which have been distributed at an annual rental and in small parcels for every kind of

cultivation and especially that of the tobacco plant whose leaves it produces of a superior quality. He has garrisoned it with troops, destined a prison thereat, and named a military commander. It begins its development with a barracks already constructed, as also a hospital, forty houses, grocery stores, blacksmith and carpenter shops, and a minister of the Royal treasury assigned to it. This new colony, called Reina Amalia, and its capital, Nueva Gerona, will figure before long in the list of towns, and many families theretofore in want will owe to its illustrious founder a life of comfort, it being worthy of note that His Excellency in this undertaking has not caused the State any extra expenses beyond that of the insignificant one connected with the purchase of an estate and the wages of a carpenter, all other means employed having been obtained without expense to anyone.

The half league and the sixty caballerias were donated by the Messrs. Acosta brothers, residents of Bejucal, one of these gentlemen being the author of the valuable history of his town, published amongst the documents for the history of the Island of Cuba.

"CENSUS OF THE POPULATION OF CUBA IN 1841."

1841. This census, which was taken by order of and under the direction of the Captain-General, includes the Isle of Pines, as will be seen from the following extract:

Western Department.—Jurisdiction of Habana.

*Name of the districts—*

---

---

51. Isle of Pines.—Males and females of all classes, 621.

"ROYAL ORDER OF AUGUST 19, 1855."

1855. By dispositions first and second of the Royal order of August 19, 1855, the Captain and Governor General of Cuba was directed to make a new division of the judicial districts of the Island, and in obedience thereto he issued the following order on December 15th:

"OFFICE OF THE SECRETARY OF GOVERNMENT."

"DIVISION OF THE ISLAND INTO JUDICIAL DISTRICTS, ACCORDING TO ROYAL ORDER OF AUGUST 19."

In fulfillment of dispositions First and Second of the Royal Order of August last, the Island of Cuba is divided into the following judicial districts:

---

---

*Bejucal.*

1. Bauta. 2. The city of Bejucal. 3. Batabano. 4. Cano. 5. Guatao. 6. Isle of Pines. 11. Wajay.

Havana, December 15th, 1855.

JOSE DE LA CONCHA.

And then to prevent any possible misunderstanding the following notice was issued the same day, expressing the changes which had been made in the former districts:

"OFFICE OF THE SECRETARY OF GOVERNMENT."

"EXPRESSING THE CHANGES MADE IN THE OLD DISTRICTS BY THE NEW JUDICIAL DIVISION."

1855. "For the better understanding of the new judicial division of the island,

following are exprest the changes which have been made in the old districts:

. . . . . .

. . . . . .

*Bejucal:* To it is incorporated the whole of the former jurisdictions of Santiago and the Isle of Pines.

Havana, December 15th, 1855.

JOSE DE LA CONCHA.

"GUIDE OF THE EMPLOYEE OF THE DEPARTMENT OF FINANCE."

1858. This work written by Don Leandro Garcia Gragitena, an employee in the Department of Finance, was approved by the Superior Government of Cuba. It was long regarded as a standard.

At page 8 he says:

> The province of Habana or Western Department is divided into twenty jurisdictions, which are at the same time, civil and military, as follows: Beginning at Cape San Antonio, New Filipina from said cape to the River Pan de Azucar along the North Coast and to the River San Diego along the South Coast; * * *
>
> *Isle of Pines of itself alone* forms the jurisdiction of La Reina Aamalia.

"GENERAL BUDGET OF SPAIN FOR 1857-58."

1858. In the general budget of Spain for that year the following extracts appear:

"GENERAL BUDGETS OF THE RECEIPTS AND EXPENDITURES OF THE STATE IN THE ISLAND OF CUBA."

> From the 1st of July, 1857, to the end of December, 1858, approved by His Majesty by royal order of July 7, 1858.

## Habana.—Printing office of the governor and captain-general of H. M.—Teniente Rey street, No. 13.

1857.

*General budget of receipts.*

| | |
|---|---|
| Section 1st, chapter 2d, article 3d. Receipts from the police department, Isle of Pines | $340 |
| Section 2d, receipts from Government monopolies, Chapter I, Article I, Isle of Pines | 1,500 |
| Section 5th, property of the state. Income from annuities—Isle of Pines | 420 |

EXPENDITURES.

Parish clergy.—Section 1st, chapter 5th, article 2d, parishes, Isle of Pines.

| | |
|---|---|
| Priest | $531.44 |
| Chief sexton | 350.00 |
| | 881.44 |

NOTE.

The parish clergy were paid in accordance with the dispositions of the royal warrants of September 13, 1852, which, in accord with the Holy See, the Spanish Government promulgated.

| | |
|---|---|
| Section 1st, chapter 6th, Article 2d.—Effects for the clergy.—Isle of Pines | $300 |
| Section 2d, War.—Chapter 26, article 1.—Isle of Pines. Lights for the guardhouse and military barracks | 144 |
| Utensil | 170 |

Section 3d.—Department of the treasury administrative personnel, office of superintendent general and under secretary.—Section 1st, chapter 1st.—Article 9th, depositories of the 6th class.

Isle of Pines:

| | |
|---|---|
| Depository by royal order of October 6, 1853 | $800 |
| Clerk, second class.—Idem idem | 409 |
| | 1,209 |

"CENSUS OF CUBA FOR THE YEAR 1861."

1861. From the foregoing census, taken by order of and under the direction of the captain and governor-general, the following is extracted:

| Occidental department. | Total general population. | | |
|---|---|---|---|
| | Males. | Females. | Total. |
| Bahia Honda | 7,750 | 5,923 | 13,673 |
| Bejucal | 13,110 | 10,658 | 23,748 |
| Cardenas | 33,049 | 17,416 | 50,465 |
| Cienfuegos | 31,458 | 22,576 | 54,216 |
| Colon | 40,961 | 23,256 | 64,217 |
| Guanabacoa | 13,953 | 12,260 | 26,213 |
| Guinajay | 23,214 | 16,629 | 39,843 |
| Guines | 35,946 | 26,516 | 62,462 |
| Habana | 105,053 | 85,279 | 199,332 |
| Jaruco | 21,244 | 16,227 | 37,571 |
| Matanzas | 47,260 | 32,652 | 79,913 |
| Nenvitas | 3,925 | 2,451 | 6,376 |
| Pinar del Rio | 41,586 | 27,340 | 68,926 |
| Puerto Principe | 34,744 | 27,783 | 62,527 |
| Remedios | 26,277 | 20,970 | 47,247 |
| Sagua la Grande | 32,181 | 19,895 | 51,986 |
| San Antonio | 18,255 | 15,631 | 33,886 |
| Santa Clara | 28,230 | 24,414 | 52,644 |
| San Cristobal | 16,345 | 12,632 | 28,977 |
| Santa Ma del Rosario | 4,276 | 3,770 | 8,046 |
| Santiago de Las Vegas | 8,946 | 6,904 | 15,850 |
| Sancti Spiritus | 25,076 | 20,631 | 45,707 |
| Trinidad | 20,912 | 16,597 | 37,509 |
| Isla de Pinos | 1,326 | 741 | 2,067 |
| Total department occidental | 635,277 | 468,042 | 1,113,401 |

ROYAL DECREE OF JUNE NINTH, 1878.

1878. On June 9, 1878, a royal decree was issued dividing the island of Cuba into six provinces for the administration of civil affairs, which was transmitted to the captain-general of Cuba by the minister for the colonies, Señor Elduagen, as follows:

EXCELLENCY:

With this date H. M. has seen fit to issue the following royal decree:

After taking into consideration the reasons presented to me by the minister of the colonies and in accord with the council of ministers, I decree the following:

ARTICLE FIRST. For the government and administration of the island of Cuba, it is

hereby divided into six civil provinces, which will bear the names of their respective capitals and the following: Pinar del Rio, Habana, Matanzas, Santa Clara, Puerto Principe, and Santiago de Cuba.

ARTICLE SECOND. A province of the first class shall be Habana, of the second Santiago de Cuba, and of the third Pinar del Rio, Matanzas, Santa Clara, and Puerto Principe.

ARTICLE THIRD. *The dividing lines between these provinces shall be those fixt in the detailed description of the same, approved on this date;* but if a town situated at the extremity of a province should have a portion of its boundaries within the bordering province, the territory of said town shall belong wholly to the province in which the majority of its inhabitants and buildings shall be situated, even tho the dividing line shall appear to separate them.

ARTICLE FOURTH. The minister of the colonies shall dictate the necessary orders for the actual marking out upon the ground of the said boundaries of the provinces, so that in keeping with this division those corresponding to the municipal districts be rectified, and that there shall conform thereto also the different services of the State in the departments of finance, government, and public improvements.

ARTICLE FIFTH. The governor-general after hearing the president of the audencia of Habana, will draw up and submit for its superior approval a draft of the judicial division of the island in accord with that of the provinces which this decree established.

Given at the palace, June ninth, 1878. Alfonso. The minister of the colonies, José Elduagen.

All of which, by royal order, I commu-

nicate to you for your information and consequent effect.

God keep Your Excellency many years. *Madrid*, June 9, 1878.

J. ELDUAGEN.

To His Excellency, the Governor-General of Cuba.

No. 872.

HABANA, JUNE 9, 1878. EXECUTE H. M'S. COMMAND. (S) CAMPOS.

The "detailed description of the same approved on this date," to which article third of the preceding royal decree of June 9 refers, is the following, which was approved by His Majesty the same day.

"*DETAILED DESCRIPTION of the limits of the provinces into which the island of Cuba is divided, made upon the Geotopographical map of said island, published by Don Esteban Pichardo, under the patronage and direction of the captain-general.*"

BOUNDARY BETWEEN THE PROVINCES OF PINAR DEL RIO AND HABANA.

The dividing line begins on the north coast of the island at Point Guines to the west of the Ensenada de Porlier; continues toward the point called Garto, thereafter it passes between those called Banes and O'Farrill and thence by Alfonso, crosses the dividing lines of the waters between the north and south coast of the island, in Esperon; continues toward the south, passing near Ponce de Leon and Guayabal, which borders on the left, and by Zaldivar, Bachoni, and Pascual; crosses the railway from Habana to Guanajay to the right of Tumba-

Cuatro, and leaving on its left Ceiba del Agua, it continues near Bengochea to the Concepcion Desengano and Villena, crossing over the railway from Habana to Pinar del Rio between those two last points, and continues in a straight line to the south coast of the island, ending therein by los Banos de Guanimar.

NOTE.—The Isle of Pines is included in the province of Habana.

NOTE.—The islands and keys adjacent to the island belongs to the provinces upon which they respectively border.

Approved by His Majesty.

*Madrid*, June 9, 1878.

(S.) J. ELDUAGEN.

CENSUS OF CUBA FOR 1877.

1877. By order of and under the direction of the captain-general of Cuba, a census of the population was taken on December 31, 1877, of which the following is an extract:

Province, Habana. — "Ayuntamiento" (municipality); Isle of Pines. Number of sections, 5; certificates of registry, 349; actual population, 2,478; 1,614 males, 864 females.

RESIDENTS PRESENT.

| | Males. | Females. |
|---|---|---|
| Spaniards | 1,007 | 679 |
| Foreigners | 2 | ..... |
| Asiatics | 46 | ..... |
| Colored | 224 | 152 |

TRANSIENTS.

| | | |
|---|---|---|
| Spaniards | 296 | 21 |
| Foreigners | 3 | ..... |
| Asiatics | 36 | 12 |
| Colored | ..... | ..... |

RESIDENTS ABSENT.

| | Males. | Females. |
|---|---|---|
| Spaniards | 105 | 17 |
| Foreigners | 5 | |
| Asiatics | 76 | 5 |
| Colored | | |

LEGAL POPULATION.

| | | |
|---|---|---|
| Total | 1,465 | 853 |
| Grand total | 2,318 | |

The foregoing report of the census taken in 1877 was approved and declared official by His Majesty in 1883, as will be seen from the following:

ROYAL DECREE.

Upon hearing the reasons presented to me by the president of the council of ministers, in accord with the said council, I decree as follows:

ARTICLE 1.—The census of Spain is declared official, said census being the one taken according to the enrollment made the 31st of December, 1877, in the Peninsula, adjacent isles and possessions in the North of Africa by the department general of the Geographical and Statistical Institute, and in the islands of CUBA and Puerto Rico, Philippines, and Fernando Po by their respective governments general.

Given at the palace the eleventh of May, one thousand eight hundred and eighty-three.

ALFONSO.

The president of the council of ministers.

PRAXEDES MATEO SAGASTA.

In the elections of 1879 for deputies to represent Cuba in the Spanish Cortes, notice of the election districts was published by

the government general of the island, of which the following is an extract:

1879. "APPROVAL having been expressed by H. M. Government, by telegram of this date, the division of the island into electoral districts and the subdivision of these into sections, made in accordance with articles 2 and 4 of the new law of December 28th last, is hereby published for the purposes pursuant thereto:"

"SECOND DISTRICT."

"*Province of Havana.*"

"Free population, 383,850; number of Deputies, 8. Rate: 47,981.

Judicial districts. Sections. Free population. Total.

City of Bejucal, 6,717.

Bejucal.—Isle of Pines, 2,200.

Havana, February 1, 1879.

The Secretary of the Government General,

R. GALBIS.

1890. In December of 1890 a royal decree concerning the election of Deputies to represent Cuba in the Spanish Cortes, was issued, of which the following is an extract:

After hearing the reasons presented to me by the Minister of the Colonies,

ROYAL DECREE.

"In the name of my august son, the King Don Alfonso XIII and as Queen Regent of the Kingdom, on motion of the minister of the colonies, and in accord with the council of ministers, I decree the following:

"ARTICLE 1.—Until the publication of a

new electoral law, there will be in force in the island of Cuba the divisions into departments and districts for the election of deputies to the Cortes, approved by the said Cortes in the following form:

PROVINCE OF HABANA.

Population 451,928.—Number of deputies, 9; department of Habana, 6 deputies.

| | |
|---|---|
| Habana | 200,448 |
| Marianao | 7,352 |
| Alquizar | 8,314 |
| Ceiba del Agua | 3,232 |
| Guira de Melena | 8,721 |
| San Antonio de los Banos | 12,423 |
| Bauta | 8,070 |
| Batabano | 8,016 |
| Bejucal | 7,902 |
| El Cano | 3,745 |
| Isla de Pinos | 2,040 |
| La Salud | 4,896 |
| Quivican | 4,585 |
| San Antonio de las Vegas | 4,469 |
| Santiago de las Vegas | 12,081 |
| San Felipe | 2,313 |
| Vereda Nueva | 3,277 |
| Total | 301,884 |

ARTICLE 2.—The Government will give an account to the Cortes of the execution of this decree.

Given at the Palace the 18th of December, 1890.

MARIA CRISTINA.

The Ministers of the Colonies:
ANTONIO MARIA FABIE."

1896. The following are taken from the "general budget of income and expenditures on the Island of Cuba for 1895–96.

| | |
|---|---|
| Section 2.—Grace and justice; chapter 5, article 2.—Isle of Pines; priest | $583 |
| Assistant | 350 |
| | 933 |

| | |
|---|---|
| Section 5.—Navy; chapter 1, article 1.—Four naval ensigns, to be adjutants at Mantua, Mariel, Bahia Honda, and Isle of Pines, at $1,125 | $4,500 |
| Article 13.—Maritime guards, port service, Isle of Pines, one boat; one deputy coxwain | $264 |
| Four sailors | 864 |
| | 1,128 |
| 17 port boatswains, per districts; 3, Matanzas; 3 for Cardenas, etc., 1 for Isle of Pines, at $480 | 8,160 |
| Section 5, chapter 2, article 1, for office expenses of the commandancies of Mantua, Mariel, Isle of Pines, and Bahia Honda, at $120 | 480 |
| Section 5, department of government; political government; personnel.—Chapter 7, article 2.—Isle of Pines "commandante de armas" (military official) with the functions of a "capitan de partido" (an officer who exercised judicial and administrative powers) | 600 |
| Section 6, government; chapter 12, article 1.—Department of posts; offices of the fourth class; 30 for the post-offices at Madruga, *Nueva Gerona* (Isle Pines) *Santa Fé* (Isle of Pines), etc., at $300 | 9,000 |
| Over sea carriers; one carrier between Habana and Isle of Pines | 400 |

1898. For the election of deputies to represent Cuba in the Spanish Cortes in 1898, notice concerning the districts was published by the Government, of which the following is an extract:

"OFFICE OF THE GOVERNOR-GENERAL OF THE ISLAND OF CUBA. INSULAR BOARD OF THE ELECTORAL CENSUS. OFFICE OF THE SECRETARY."

It being directed by the fourth of the transitory dispositions of the royal decree of November 25, 1897, extending to this island the electoral law of June 25, 1890, that until a new division is made in the electoral districts for deputies to the Cortes in the territory of the Island of Cuba and Porto Rico, the division actually existing and in force shall be declared valid; this board, at a meeting held the 29th of January last, resolved, amongst other things, that there be published for due and general information,

the aforesaid electoral division by departments and districts, which is as follows:

"PROVINCE OF HABANA.

"Population, 451,928.—Number of deputies, 9; department of Habana, 6 deputies.

| | |
|---|---|
| Habana | 200,448 |
| Marianao | 7,352 |
| Alquizar | 8,314 |
| Ceiba del Agua | 3,232 |
| Guira de Melena | 8,721 |
| San Antonio de los Banos | 12,423 |
| Bauta | 8,070 |
| Batabano | 8,016 |
| Bejucal | 7,902 |
| El Cano | 3,745 |
| Isla de Pinos | 2,040 |
| La Salud | 4,896 |
| Quivican | 4,585 |
| San Antonio de las Vegas | 4,469 |
| Santiago de las Vegas | 12,081 |
| San Felipe | 2,313 |
| Vereda Nueva | 3,277 |
| Total | 301,884 |

By order of His Excellency, the President, this is published in the "Gaceta de la Habana" (Havana Gazette) for general information.

Habana, February 5, 1898.

The secretary,

JOSE CONGOSTO.

## Appendix B.

The following letters from the files of the Treasury Department show its attitude and that of the State Department, and that Cuba has and is levying tariff duties on American goods, and that Cuba considers the reciprocity treaty to favor imports into the Isle of Pines from the United States:

September 26, 1905.

Mr. Robert W. Dunning,
*507 Potomac avenue, Buffalo, N. Y.*

Sir: The Department is in receipt of your letter of the 21st instant, in which you request to be informed as to the present status of the Isle of Pines and the probability of the same becoming a possession of the United States in the near future.

In reply I have to inform you that it is provided by the act of March 2, 1901, "that the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty," and that at the time of the withdrawal of the United States from Cuba as an intervening power it was agreed that the existing government of the Isle of Pines should continue as the de facto government pending the settlement of the title to said island by treaty.

A treaty has been pending before the United States Senate providing for the cession of said island to Cuba, but action thereon has not yet been

taken, and the Department is unable to inform you as to the probable future action thereon.

Respectfully,

(Sgd.) C. H. KEEP,
*Assistant Secretary.*

No inclosure.

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DECEMBER 12, 1904.

MR. J. J. THORNBURGH,
*c/o The Side Delivery Buncher Co.,*
*Toledo, Ohio.*

SIR: In reply to your inquiry of the 3rd instant as to whether any duties are required to be paid on merchandise shipped from the United States to the Isle of Pines, I have to inform you that the customs laws of said country are administered by the Republic of Cuba, and that goods imported there will probably be subject to duty under the Cuban tariff of February 5, 1904.

Respectfully,

(Sgd.) ROBERT B. ARMSTRONG,
*Acting Secretary.*

No enclosure.

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MAY 22, 1903.

J. FRED CLARKE, M. D.,
*University of Iowa, Fairfield, Iowa.*

SIR: Referring to your letter of February 9th last, I have to state that this Department is informed by the United States minister to Cuba, thru the Secretary of State, that jelly glasses imported into the Isle of Pines from the United States are dutiable under articles 10 and 11 of the

Cuban tariff according to whether they are ordinary glassware or crystal or glass imitating crystal.

A copy of said tariff is herewith inclosed.

No direct importation is made into the Isle of Pines, as said island has no port of entry. All merchandise intended for that island should be sent to the port of Batabano, Cuba.

Respectfully,

_____ _____,

*Assistant Secretary.*

One inclosure.

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TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
*Washington, February 13, 1903.*

J. FRED CLARKE, M. D.,
*State University of Iowa, Fairfield, Iowa.*

SIR: In reply to that portion of your letter of the 9th instant, which relates to goods coming into the United States from the Isle of Pines, I have to state that the Department decided on August 6 last that duties should be assessed on such goods at the same rates as similar merchandise imported from other places, pending the determination of the title under the provision in the act of March 2, 1901 (31 Stat. L., 898), "that the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty." Jelly made there would therefore be subject to duty if shipped to the United States, but duty would not be assessed on the glass coverings if of American manufacture.

Your inquiry regarding duties on jelly glasses going into said island from the United States will be the subject of another communication.

Respectfully,

(Sgd.) O. L. SPAULDING,
*Assistant Secretary.*

No inclosure.

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No. 517.] LEGATION OF THE
UNITED STATES OF AMERICA,
*Habana, Cuba, May 7, 1903.*

The Honorable JOHN HAY,
*Secretary of State, Washington, D. C.*

SIR: I have the honor to acknowledge receipt of Department Instruction No. 191 of March 2, 1903, asking whether there is any duty on jelly glasses proceeding from the United States to the Isle of Pines, and, if so, what is the rate of duty thereof.

In reply I have to enclose herewith copy of a note from the foreign office, transmitting a report from the Secretary of the Treasury on the subject, translation of which is herewith enclosed, stating that the article in question pays duty under articles 10 and 11.

I am, sir, your obedient servant,

H. G. SQUIERS.

Enclosures: No. 1, Mr. Zaldo to Mr. Squiers, May 4, 1903; No. 2, Mr. Montes to Mr. Zaldo April 29, 1903.

[Translation.—Enclosure No. 1, Dispatch No. 517.]

No. 441.] DEPARTMENT OF
STATE AND JUSTICE,
*Habana, May 4, 1903.*

His Excellency HERBERT G. SQUIERS,
*E. E. & M. P. of the U. S. of A.*

Mr. MINISTER: Referring to your polite note, No. 204, of the 10th of last March, requesting information about the duty on jelly glasses exported from the United States to the Isle of Pines, I have the honor to forward herewith copy of a communication on the subject from the Secretary of the Treasury.

I take occasion to renew to your excellency the assurance of my high and distinguished consideration.

CARLOS DE ZALDO,
*Secretary.*

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[Translation.—Enclosure No. 2, Dispatch No. 517.]

REPUBLIC OF CUBA,
TREASURY DEPARTMENT,
CUSTOM-HOUSE DIVISION,
*Habana, April 29, 1903.*

To the SECRETARY OF STATE AND JUSTICE.

Mr. SECRETARY: I hereby acknowledge receipt of your communication of the 13th of the present month, in which you ask "whether there is any duty on jelly glasses proceeding from the United States to the Isle of Pines, and if so, what is the rate thereof?"

In reply this Department informs you that common jelly glasses pay duty under article 10, and jelly glasses with glass tops or imitation of the same pay duty under article 11. No direct importation into the Isle of Pines is allowed, as the said island has no qualified port. All merchandise should be sent to the port of Batabano, which is the chief

port of that customs district, as I had the honor to inform you in a communication of March 28.

Yours, respectfully,

JOSÉ M. GARCIA MONTES,
*Secretary of the Treasury.*

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DEPARTMENT OF STATE,
*Washington, February 18, 1903.*

The honorable the SECRETARY OF THE TREASURY.

DEAR SIR: I have received your letter of the 13th of February, asking for any information which I may be able to communicate on the subject of the Isle of Pines.

The act of March 2, 1901, which you quote, provides that "the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty." On the 20th of May, the date when the United States withdrew from Cuba as an intervening power, Gen. Leonard Wood, military governor of Cuba, directed a communication to the President and Congress of the Republic of Cuba, in which the following words are contained: "It is understood by the United States that the present government of the Isle of Pines will continue as a de facto government pending settlement of the title to the said island by treaty, pursuant to the Cuban constitution and the act of Congress of the United States, approved March 2, 1901."

This Department has no information of any change in the status of the Isle of Pines since the above date. The island is under the administrative jurisdiction of the Republic of Cuba as a de

facto government by the official acts referred to above. No action has been taken to adjust by treaty the permanent title to the island.

Very respectfully, yours,

(Sgd.) JOHN HAY.

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DEPARTMENT OF STATE,
*Washington, March 2, 1903.*

The honorable the SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge the receipt of your Department's letter of the 25th ultimo, asking whether there is any duty on jelly glasses proceeding from the United States to the Isle of Pines, and, if so, what is the rate thereof.

The United States legation at Habana has been instructed to ascertain and report.

I have the honor to be, sir, your obedient servant,

(Sgd.) JOHN HAY.

JULY 9, 1904.

The honorable the SECRETARY OF STATE.

SIR: I have honor to acknowledge the receipt of your letter of the 25th ultimo, enclosing copy of a despatch from the legation at Habana, transmitting certain information in reply to the inquiries contained in my letter of May 14th last as to exportations to and importations from the Isle of Pines.

I note that it is stated in the despatch that the enclosed translation of the note from the Cuban secretary of state answers fully all inquiries, except as to the extent of the importations from the United States into said island, in regard to which a report is promised as soon as the necessary data

has been received from the Cuban treasury department.

Respectfully,

(Sgd.) H. A. TAYLOR,
*Acting Secretary.*

No enclosure.

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DEPARTMENT OF STATE,
*Washington, June 25, 1904.*

The honorable the SECRETARY OF THE TREASURY.

SIR: Referring to your letter of the 14th ultimo, I have the honor to enclose herewith copy of a despatch from the legation at Habana forwarding commercial data in regard to the Isle of Pines.

I have the honor to be, sir, your obedient servant,

(Sgd.) JOHN HAY.

Enclosure: From Cuba, No. 983, June 14, 1904.

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No. 983.]
LEGATION OF THE UNITED STATES OF AMERICA,
*Habana, Cuba, June 14, 1904.*

The honorable JOHN HAY,
*Secretary of State, Washington, D. C.*

SIR: I have the honor to acknowledge receipt of Department Instruction No. 391, of May 20, 1904, requesting certain information relative to the commerce of the United States with the Isle of Pines.

In reply I beg to enclose herewith translation of a note from Secretary of State Zaldo, to whom the matter was referred, answering fully all inquiries except as to the extent of the importations from the United States into the said island.

On this point he promises a report as soon as he

shall have received the necessary data from the treasury department.

I am, sir, your obedient servant,

JACOB SLEEPER,
*Chargé d'Affaires ad interim.*

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[Enclosure in No. 983.—Translation.]

DEPARTMENT OF STATE AND JUSTICE,
*Habana, June 6, 1904.*

Mr. MINISTER: With reference to your excellency's polite note, No. 468, of May 27 last, in which, at the instance of your Government, you make certain inquiries relative to the commerce of the United States with the Isle of Pines, I have the honor to advise you that exportations and importations of merchandise may be made directly from the island to the United States, because there is a port of entry there, with a custom-house in charge of public officials, to which the present Cuban tariffs are applicable and which receive the benefits of the treaty of reciprocity, inasmuch as the said Isle of Pines, altho the treaty to that effect has not yet been approved by the American Senate, is considered by the Government as a part of the territory of the Republic of Cuba.

At the same time I beg to advise you that as soon as this Department receives the report which has been requested from the Treasury Department relative to the extent of the importations from the United States into the said island it will be at once communicated to you.

I avail myself of this occasion, etc.,

CARLOS DE ZALDO,
*Secretary.*

Excellency HERBERT G. SQUIERS,
*Etc., etc., etc.*

DEPARTMENT OF STATE,
*Washington, May 20th, 1904.*

The honorable the SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge the receipt of the letter from your Department of the 14th instant, asking for certain information relating to direct importations into the United States from the Isle of Pines and into that island from this country and to the tariff treatment by Cuba of the latter importations, and expressing the desire to receive an expression of this Department's opinion as to the present status of the Isle of Pines.

In reply I beg to state that the government of the Isle of Pines is administered by the Government of Cuba, and that a treaty between this country and Cuba fixing the status of the Isle of Pines is now pending in the United States Senate.

With a view to securing definite and authoritative information in response to your Department's further inquiries, they have to-day been referred for consideration and report to the minister of the United States at Habana.

I have the honor to be, sir, your obedient servant,

(Sgd.) FRANCIS B. LOOMIS,
*Acting Secretary.*

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MAY 14, 1904.

The honorable the SECRETARY OF STATE.

SIR: I have the honor to request information upon the following points, to wit:

1. Are direct importations from the United States made into the Isle of Pines; and if so, to what extent and under what tariff?

2. If such importations are made under the Cuban tariff, do they, as a matter of fact, enjoy the benefit of the Cuban reciprocity treaty with the United States?

3. Are exports made from the Isle of Pines direct to the United States?

I should be pleased to receive an expression of your opinion as to the present status of the Isle of Pines.

Respectfully,

(Sgd.) H. A. TAYLOR,
*Acting Secretary.*

(No inclosure.)

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MARCH 14, 1904.

Mr. CHARLES A. REDMOND,
*531 Vine St., Cincinnati, Ohio.*

SIR: Referring to your letter of the 5th ultimo concerning importations of lumber and fruit from the Isle of Pines, I will state that the Department is in receipt of a communication from the Secretary of State, from which it appears that there has been no change in the status of the Isle of Pines by reason of the failure of the United States Senate to ratify the Isle of Pines treaty within the limit of time provided for ratification in the treaty itself; that when Cuba was evacuated the Isle of Pines was turned over to the Cuban Government, subject to its eventual disposition by treaty; that a new treaty, identical in all respects with the one which failed of ratification, has been signed and will be transmitted to the Senate, and that pending action thereon this Government claims no jurisdiction over the Isle of Pines.

In view of the foregoing, I have to advise you that lumber and fruit imported into this country from the Isle of Pines are subject to the rates of duty provided in the tariff act of July 24, 1897, a copy of which is herewith enclosed.

While it is presumed that articles brought into Cuba from the Isle of Pines are not subject to duty, yet, in order to obtain authentic information on that point, your question should be addrest to the Cuban Cuban Government.

Respectfully,

(Sgd.) ROBERT B. ARMSTRONG.

One enclosure.

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DEPARTMENT OF STATE,
*Washington, March 2, 1904.*

DEAR SIR: I have received your letter of the 27th of February in regard to the Isle of Pines:

There is no change in the status of the Isle of Pines by reason of the failure of the Senate to ratify the Isle of Pines treaty within the limit assigned for ratification in the treaty itself. When Cuba was evacuated, the Isle of Pines was turned over to the Cuban Government, subject to its eventual disposition by treaty. A new treaty, identical in all respects with the one which failed of ratification, has been signed to-day, and will be at once sent to the Senate. Pending action thereon this Government claims no jurisdiction over the Isle of Pines.

I am, sir, very truly, your obedient servant,

(Sgd.) JOHN HAY.

The honorable the SECRETARY OF THE TREASURY.

FEBRUARY 27, 1904.

The honorable the SECRETARY OF STATE.

SIR: In view of the announcement in the public press that the Isles of Pines treaty has failed of ratification, owing to the expiration of the time limit within which the treaty should have been ratified, I have the honor to request that this Department be informed as to the status of said island under existing conditions, and particularly whether our Government claims jurisdiction over said territory until such time as a treaty defining its status shall have been ratified.

The foregoing information is desired to enable this Department to answer an inquiry concerning the tariff laws applicable to the Isle of Pines.

Respectfully,

(Sgd.) ROBERT B. ARMSTRONG,
*Acting Secretary.*

(No inclosure.)

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[Press announcement.]

**ISLE OF PINES TREATY.**

FAILURE OF RATIFICATION ATTRIBUTED IN HAVANA TO OVERSIGHT.

HAVANA, *Feb. 25.*

The lapsing of the Isle of Pines treaty on account of its not being ratified within the time limit is regarded here to be mainly due to the fact that the State Department at Washington did not call attention to the matter. It would also appear, however, that the Cuban state department failed to remember this time limit.

The treaty was signed in Havana July 2, 1903, and was ratified by the Cuban senate on July 16, since when it has been pending in the United

States Senate. The last condition of the treaty was to the effect that the ratification be exchanged in Washington within seven months of the date of signing.

Persons interested in securing American sovereignty for the Isle of Pines are jubilant at this development, considering it to be a setback which gives additional promise of the final defeat of the proposition that the island remain under Cuban sovereignty.

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CINCINNATI, O., *2/5/04*.

DEAR SIRS: Will you kindly direct this letter to where the following questions will be answered.

Does lumber and fruit in the raw state from Isle of Pines (south of Cuba) enter United States ports free of duty? If not, what is the duty?

Is same, Isle of Pines, still U. S. property? If not, does lumber and fruit enter Cuba free of duty?

Are not United States citizens given more protection and freedom on Isle of Pines than people of different nationalities, other than natives? If not under U. S. protection, are Americans subject to any special tax not imposed on natives? If there are any pamphlets bearing on same, kindly send or advise me of same; also, would be pleased for any information pertaining to above.

Hoping this will receive your immediate attention, I remain,

Respectfully, yours,

CHAS. A. REDMOND,
*531–533 Vine St., Cincinnati, Ohio.*

P. S.—Probably a little explanation would help. I am thinking of investing in some timber land and expect to cultivate same land after cleared.

9976—06——7

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